

(Committee on Governance and Ethics 11/19/14)

**The Port Authority of New York and New Jersey  
Committee on Governance and Ethics Transcripts  
November 19, 2014**

[Board Chair J. Degnan] I believe that this may be your first meeting, Ken, as the chair of the Governance and Ethics Committee. I want to thank you for being willing to undertake that role, and turn the gavel over to you at the moment.

[inaudible]

[K. Eastman] There are no recusals. Can we just do the composition of the membership, please? So the committee's composed of yourself, Commissioner Lipper, as chair, Commissioner Schuber as vice-chair, and Commissioners Moerdler and Rosado. All committee members are in attendance. Thank you.

[inaudible]

[Chair K. Lipper] —million PATH riders, and 65 million bus riders. And we have a \$29 billion capital budget in transportation infrastructure. And our operating budget is on an unsustainable trend, as far as expenses, particularly for things like security, outstripping our revenue sources. All of this is being carried out— this huge business operation, perhaps the largest such authority in the world, is being carried out without the benefit of a seasoned business person at the top of the operating portion of the agency. And the first recommendation that we want to put on our consideration to initiate through the Governance Committee to the board, is that we appoint a COO, a chief operating officer, reporting directly to the board, selected after a worldwide search, purely on merit, who has a background as a CEO, a COO, of a major transportation company— of an airline, a railroad, something that is in our wheelhouse, where a long expertise can benefit us. And a second appointment would be a deputy operating officer who had deep experience as a COO or a CEO in the infrastructure construction area. We have great people in each department, and in each subdivision of the departments, on a daily operating basis. But in order to get uniformity when you have a \$29 billion budget, in order to make sure that timely performance— we've been severely criticized for the Fulton Transportation Center, for billions of dollars of overruns and delays— and make sure that we have somebody who can pull all of our priorities together in this transportation infrastructure area and in the infrastructure construction area. Those two appointments would be a critical addition to the Port Authority. And their having responsibility to the board, and hopefully offering a market rate of compensation within the bounds of a public agency, would get us somebody who wants to do public service and could bring us the experience level in these areas that we need. I'm suggesting a longer-term appointment of at least five years, because to make the kind of changes that we need, and to make things work as well as can be done here, we need at least five years for these people to institute their programs and make sure that we're smoothly operating. And I would also suggest that we form an executive committee of the operating department heads and the key staff agencies within us, like finance, and legal, and human capital. These departments would report to the COO, and those in real estate, and construction, and the infrastructure construction areas would report to the deputy COO. And this executive committee would meet

at least twice a month: one week before the board meeting, and one week after the board meeting. That would ensure an interaction between the policy-making body of the Port Authority and the operating part of the Port Authority. Everybody would be on the same page, and the policies would be able to be clearly communicated, and the problems of the Port Authority would be immediately brought to the operating people, who in turn would bring it to the board. I think that type of a structure would be a critical improvement at the Port Authority. The executive directors—whom we are blessed with having very able executive directors—would be running a long-term policy planning operation, which would be dealing with the type of resources we need to carry out our programs, how we protect against potential disasters, and the overall direction in carrying out our mission, and making sure that we're on our mission. A second major reform that we have to consider at this committee is to introduce performance metrics. Major corporations have performance metrics which are applied to every single employee at every single level within a corporation. So I recommend that we consider, and with the help of experts, instituting performance metrics within the agency, where the COO and the deputy COO evaluate the department heads on the executive operating committee, and each department head and subdivision head evaluates in a formal way, with metric ratings of 1 to 10, all the employees. And they have meeting with each employee on how that employee can improve, and why he got the score he got. And human capital would base future promotions, retentions, et cetera, on this type of metric system. And it's well-instituted at major corporations, and it's something the Port Authority would benefit from enormously, as would the employees benefit enormously. We also should appoint an office of accountability at the Port Authority, similar to the General Accounting Office or the OMB, some combination of those agencies at the Port Authority who can evaluate our departmental performance, and who also could have the expertise to give us, the board, an independent look at the project costs that are being proposed to us, and on an ongoing basis, and could monitor these projects, and just provide us with longer-term expertise in backing up the votes that we're being asked to make on a continuous basis. And as I say, the GAO would be an excellent model for such a thing. A third element would be to have a unified leasing department. Right now every department at the Port Authority, and every subdivision, does its own leasing. As a result, there's no uniformity of policy, there's no skill level that's uniform, and there's no common experience. So you get many uneven outcomes. And if we had a large, uniform leasing entity, where you can take the individual expertise from the department, we would have a much greater chance of success in our leasing operations. It's a major leasing enterprise with 45 million square feet being leased by the Port Authority—leased out, mostly in retail. And we lease a lot of square feet as well. So we should focus on having a consolidated leasing operation, rather than a balkanized operation. Another major thing we have to consider is to form a committee or a group of people within the Port Authority with the specific mission to identify all of our excess real estate. The Port Authority has a lot of real estate unrelated to the transportation mission. And this real estate is worth multibillions of dollars, including the World Trade Center, which was an important jump-start that we had to make, of \$3 billion just in the buildings, and then \$4 billion in the transportation center. But as far as our continuing mission, we have need for billions of dollars for things within our core mission, like the bus terminal. And the redundant real estate has to be focused on it. There should be a systematic identification of these assets, and a systematic program to sell off these assets and use that money for transportation. We've undertaken the codification of all the ethics requirements at the Port Authority into a single

book and a single unified ethics code. We have the ethical elements, but they're spread all over different announcements and administrative codes. And we're going to consolidate that into one thing which we hope to review, simplify, and make certain that it's available to everyone and is an effective tool for conduct. Right now, one of the areas we have to focus on here is our recusal policy. It's been traditional at the Port Authority that every commissioner makes his own rules on— decides when he needs to recuse himself. That's usually a good judgment and a fair judgment, but in retrospect, people could look back and say, "No, you should have recused yourself." So for the protection of the commissioners, as well as for the appearance for the public, and for the actuality of the public, we should have objective recusal rules, at least minimally. The director can go further, but there should be minimum recusal rules, and we should also decide what recusal means. Does it mean not being able to talk on an issue? Not being able to vote on an issue? Do you have to leave the room? We should have a very definite definition of these things. And furthermore, it's not been clear at the Port Authority— many commissioners have very specific expertise, and it would be very useful to the Port Authority in helping us negotiate, and in the past, have been. However, this gives a bad appearance to the public of a kind of crony capitalism. It confuses a counterparty who doesn't know who's really making the decision— is it really the board that's speaking, or is it the individual that's speaking? And it also sets up a competition at the board of the person who negotiates naturally feeling, "I've done my best. Why are they asking me all these painful questions and being so difficult?" So in order to maintain the expertise on the board, in terms of voting, we should have a policy that doesn't permit anyone to negotiate on behalf of the Port Authority who's also a commissioner, and have that person be evaluating rather than taking action on something. And finally, on our public sessions. Under Chairman Degnan, we've significantly liberalized our interaction with the public. I think that we should formally adopt a concept or rule that everything should be done in the public, except where absolutely necessary to be outside of public. It's not a bad thing for there to be discussion, debate, dissent, disagreement, and explanation of why things are done. So we have to organize some kind of systematic approach where we at least can explain the different points of view to the public. And these are basically the agenda for the next six months. We're going to be getting a— I'm told to make sure I clarify, these are my suggestions. They certainly are. These are my suggestions for the committee to discuss and consider, and they've not been discussed yet by the committee. We're also going to have input from the governors' special reform panel, which will then form our policies to recommend to the board. So this is an agenda, hopefully over the next six months, which we can get completed. And I believe this would be a transformational agenda for the Port Authority, and make us a better-managed place, a better, more responsible place, and a place that the public can have maximum confidence in. We want to make sure that this is a beacon for all government agencies to look to and look at as an example of the best-run agency in the world. And I also recommend that we look at the GAO report from 2007, recommending the necessity of government agencies having COOs with expertise separate from political process. It's a very good report, and outlines the nature of the issues and the resolution. Thank you very much, and please, anyone on the committee, open up discussion if you want, or we can end it here.

[Board Chair J. Degnan] So Ken, maybe with your permission, although I'm not a committee member, I like to— and ask Scott as well to join in. Scott and I, and Rich Bagger, are the three

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commissioner representatives on the special panel appointed in May by the governors to report back to them on the future of the Port Authority at the end of this year, and are working hard to ensure that all issues are on the table, thoroughly vetted, and discussed, and reflected in recommendations to the governors at that point. Many of the ideas that you raise as potential agenda items for the committee over the next six months are in fact in discussion by that special panel. That is not to say that the board of the Port Authority is in any way limited in its own responsibility to address these issues on a parallel track with the special panel. And in fact, I think Scott agrees with me that the special panel would be informed by the views of the board on issues such as this. And so personally, speaking both as the Chairman of the Board and as a representative on that panel, I would welcome the board's input, both before the issuance of the report, and then after the issuance of the report to the extent that recommendations are made which can be adopted by the board, if those recommendations are within the ambit of the governance committee under the bylaws. They should probably come back before the committee for discussion, and deliberation, and recommendation to the board in its entirety to discuss. You and I have discussed that process one-on-one, and I thought it would be helpful to get it on the table today. I don't mean to forestall discussion on any one of these items today, and you're the chairman of the committee, so I'll leave it to you to manage that discussion. But I wanted to put an overlay on it, in terms of the special panel's role.

[Comm. D. Steiner] Scott.

[Board Chair J. Degnan] I'm not chairing at this point, so.

[Vice-Chair S. Rechler] I was gonna just add to the special panel perspective. The other thing I think is important is the special panel has brought in global experts on governance organization structures, and is going through a process which Ken, I think you alluded to. I think it would be of value on some elements, but it's pretty globally doing an audit of some of the best agencies in the country. And what are the best practices? What are the organizational structures? What's worked? What hasn't worked? And then trying to evaluate some of those organization structures and governance practice within the reality of the existence of the bi-state agency of the Port Authority. And so some of your views, I think as the chairman had noted, is relatively consistent. But I think the level of detail and substance of information that the special panel is producing, to be able to make certain recommendations, is gonna enable us to be better informed as to what are the best practices we should be adopting, what organizational structures we should be adopting along the way. And the good news is this has been going on for now a number of months, and we're a month or so away from this report being completed, to not only handle the governance element and organizational structure, but as you know, it also talks about refining the mission of the port for the 21st century, to make sure that it is allocating its resources appropriately, and focusing appropriately, and that the bi-state elements of the Port Authority are consistent with where we are as a region today, and where that plays through. So that's an important element. The other thing I just wanted to note, 'cause I think it's critical, and the chairman alluded to it but I wanted to be specific, because both in the report that the special panel's putting together and some of your commentary, there are elements of that that obviously would not fall back to the governance committee. For example, when we're talking about developing performance metrics, to me, that's an Operations Committee discussion. Or if we're

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talking about lease overviews, in terms of developing that we're managing all of our real estate leases, or allocation of core real estate versus non-core real estate, could either be Operations or the Capital Planning and Asset Management. So I think we need to be thoughtful as we ultimately have a series of recommendations for reform and mission adjustment for the port, that we appropriately empower each of the committees to execute upon each of those elements.

[Board Chair J. Degnan] I think— I don't want to take over the chairmanship of the— so I'm gonna defer to the chairman.

[Chair K. Lipper] Commissioner Steiner.

[Comm. D. Steiner] —this thing to go on. Ken, I want to commend you for a very thorough and engaging report. And I want to say, for those of us who've been here for a few years, you have addressed issues that have troubled many of us, and I look forward to working with you on these goals we've been trying to achieve. And I want to say that we have good people here. We have very good people. You know I'm always one to say what I don't like, but I want to tell you what I do like. If you want an example of what the Port Authority is good at, and why we all have to be proud of what we do, think of that episode with the window-washing equipment. A major catastrophe averted by the quick thinking of our people, led by our executive director, Pat Foye, who in a couple of hours averted a major tragedy. And there are other issues like this. We should all be very proud of our staff. And these are other things which we will work out, but we've got a good group of people, most of whom are dedicated, most of whom are terribly underpaid, and are staying here when they could be out somewhere else, making a lot of money. So I want to commend you, and I want to commend our entire staff and our leadership here for the job that we're doing. And I look forward to working with you to resolving as many of these issues that we possibly can. Thank you.

[Chair K. Lipper] Thank you, Commissioner Steiner. Are there any other comments? Pat?

[Comm. W. Schuber] Mr. Chairman, thank you very, very much, and members of the board. I want to first of all echo the appreciation to Ken—to Chairman Lipper— first of all for his visionary look at the future for the Port Authority, which I think is really very much needed, and I appreciate the work that you put into the document that you circulated to us a couple days ago. But at the same time, I think we want to make sure that we balance this at the same time with the work that's been done by the special committee, which has been full bore with regard to looking at the structure of our authority, from its top to its bottom, and bring in experts for those meetings, and particularly the ones we've sat through. So we want to make sure that we meld the two together, so that the product that's produced at the very end, both by this committee and the Operations Committee, is the very best that we can do in structuring the authority to meet the challenges of this new century. Having said that, more locally one of my concerns is the issue with regard to the central codification of the ethics code, and the final deliberation with regard to recusal, which is something that we had proposed in the past, with regard to this, so that that's finally buttoned down, not only for the purpose of preventing conflict, but to prevent any of the other issues that might arise with regard to that. I would recommend at least we start to move ahead with regard to looking at that first as we move forward, and then in conjunction

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with the special committee. Then move forward to embrace that new concept of the way the authority should be structured to meet the economic challenges that face this authority in the coming years.

[Chair K. Lipper] Thank you, Commissioner Schuber. Are there any other com—?

[Board Chair J. Degnan] Just one point of clarification, and I think you will agree with this statement. First of all, I echo what Commissioner Steiner and Commissioner Schuber just said. I think a thorough airing of these discussions in public session is an appropriate way in which to engage on these issues, and I look forward to its continuation over the next several months. Personally, though, I wouldn't want what I consider to be your comments about the management structure of the Port Authority, and the need to create a COO or CEO role which would report to the board, as a criticism of either the executive director or the deputy executive director, or to reflect an evaluation that's commonly shared by us about them. They are skilled executives with a deep background. In my four months on the board, I found each of them to be incredibly well-informed and well-motivated in terms of leading the agency. Notwithstanding the individuals, structure, I agree with you, needs to be addressed. Good people can be even more effective in the right structure. But I wouldn't want to leave an impression here— and I don't think you meant to— that there's somehow a view that the two individuals who occupy those positions are somehow not qualified to do so.

[Chair K. Lipper] I could not agree with you more on that. As a matter of fact, one of the recommendations in the memorandum is to invite the two executive directors to become ex officio members of the board so they could make appropriate input and have a say in the policy. It's not in any way to lessen my esteem for Pat or Deb. I consider them friends. I consider them having performed extremely well. This discussion is only about adding a level of specific expertise of a management type, from people who— and this has been mentioned many times by Professor Doig at Princeton, and others who have been critical of the Port Authority. Because when you have a transportation agency, there should be someone at the top of the relevant operating position who is a transportation expert, or has transportation experience. Same with when you're dealing with major infrastructure construction involving \$29 billion. It would be very useful to have somebody who managed a major infrastructure-building company at the line level of that. This is in no way to change the nature, in my thinking at least, that the executive directors are going to be the major policy drivers in the administration. They're going to be the major planners in the administration. They're going to deal with all the public image of the Port Authority, vis-à-vis the press and the public, and intergovernmental relations, where we have a huge task in and of itself in terms of getting funding from the federal government, as we found out with the Galvin bus garage, where we didn't get that aid. So allowing them to concentrate more on these key roles at the Port Authority and be on the board, is to enhance the performance of the Port Authority. It's absolutely not in any way a commentary. It's additive, that we want to enhance their role. We want to bring in experts in terms of running day-to-day operations in these transportation and construction areas. Please, Scott?

[Vice-Chair S. Rechler] Thank you. I wanted just to reiterate what the chairman said, and what I think one of the fellow commissioners said. I appreciate you sharing your opinion with the

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board, 'cause it's helpful. And I think the thing it's important to note, that there's really been a new Port Authority since this spring, when we had a lot of these commentaries shared with us, from when we brought in the panel of experts that raised these issues, and we've had a lot of feedback, both externally and internally, where we've been open-minded and been very transparent in our dialogue as to what are the strengths and weaknesses of our organization, both structurally and in terms of its focus and mission. And so I think part of what the special panel has done and is doing is trying to digest a lot of that feedback, as well as other best practices and comments, like your personal views of things, relative to how do we ensure that we depoliticize this agency as best we can, recognizing that it also is accountable to two states and two governors as appropriate, and finding that balance. And so I encourage this level of communication, and I think it's been good that we've been doing it on a regular basis. And I think specifically to Commissioner Schuber's comment on some of the elements of recusal, et cetera— we'll have some, again, some best practice metrics that the board will be able to evaluate out of the output from the special panel. So I think there's value in waiting until we get that, because there's tools and substance to it that we might as well take advantage of to make our best decision as we set policy going forward.

[Chair K. Lipper] Completely agreed. These are opening comments. And the GAO report is just another document I hope your committee looks at, which I'm sure it has already. And just to put these issues on the table as an agenda for the governors' committee. It's just an agenda, as opposed to conclusions. And once we get the reform committee's report, once we digest the federal government reports, once we do all that, we could then make constructive recommendations to the board as a whole as to how to implement some of these. Are there any other comments, questions? In that case, it's—yeah, please.

[Comm. D. Steiner] Just turn off your—

[Board Chair J. Degnan] Okay. I think that then—

[Chair. K. Lipper] Adjourns, that concludes the—