

The Port Authority of New York and New Jersey
Committee on Governance and Ethics Meeting Transcripts
February 13, 2013

[Commissioner Schuber] --for the purpose of doing that.

[H. Kadin] Thank you, Mr. Chairman, members of the Committee, ladies and gentlemen, as we commence the first meeting of 2013 for the Governance and Ethics Committee. Commissioner Schuber, who is Chairman of the Committee, suggested that the Committee be provided with a review of the restructuring of the Board's Committees that occurred in the 3rd quarter of 2012 and then specifically for the Committee to review its roles and responsibilities for the coming year. Now, as you know, in August of 2012, the Board revised its By-Laws to provide for restructuring of its Committees to provide for better alignment with long-term objectives of the agency, and this restructuring has maintained certain existing Committee functions while consolidating related duties to allow for more effective management of the Board's oversight responsibilities. There are 6 By-Law Committees now, Audit, Finance, Security, Operations, Capital Planning, Execution and Asset Management, and this Committee, Governance and Ethics. Since September, the Committees have been quite active and have met numerous times to discuss matters under their respective purviews. Following establishment of the revised Committee structure, initially 2 of the Committees met to establish its formal Charter. Each Charter provides guidelines that the Committee shall follow in connection with the satisfaction of its responsibilities under the By-Laws, and each Charter outlines the respective functions, authority, meeting requirements, reporting requirements, and powers and responsibilities of the Committee. In September of 2012, the Board reviewed and approved each of the Committee's Charters. These Charter elements ensure that the work of the Committees aligns with the priorities and needs of the Port Authority. In addition, this allows for enhanced utilization of Commissioner expertise, direction of staff efforts, creation of a more focused decision-making environment, and more effective oversight and accountability. As you can see here, each of the Committees' Charters are posted on the Port Authority's website for public inspection. Now, before you is a copy of this Committee's Charter. Commissioner Schuber, as Chairman of the Governance and Ethics Committee, thought that as we begin the new year, it would be a good opportunity for the Committee to review the Charter. The Committee is governed by the By-Laws and assists the Board in fulfilling its oversight responsibilities relating to development of and compliance with governance and ethics principles of the Port Authority. The Committee has authority through the Board's approval of its Charter for and on behalf of the agency to take all actions necessary to satisfy its responsibilities under the By-Laws and under its Charter. The Committee meets as determined by Chairman Schuber or at the request of Chairman Samson in connection with the satisfaction of the Committee's responsibilities. And as you know and as Chairman Schuber has stated earlier, quarterly meetings for 2013 have been set up for the Committee. The Committee will also meet as needed in conjunction with monthly Board meetings. Pursuant to the governance role under the Committee's Charter, during the course of the year, the Committee will assist the Board and lead the Board in an annual review and evaluation of the Board's performance, an annual review and evaluation of the performance and effectiveness of the Board's Committees and an annual review and evaluation of the Executive Director's performance. With regard to these requirements for reviews and evaluations to be undertaken by the Committee, including an assessment of Board performance and Committee effectiveness, in order to facilitate your evaluation, staff will be providing the members of the Committee over the next 2 months with materials regarding the activity of the Board and the

function, structure and activity of its Committees during the year 2012. And typically, the Committee would then report this information out in terms of its findings to the Board at the Board's annual meeting. At the conclusion of its evaluation, the Committee may, pursuant to its Charter responsibilities, wish to make recommendations to the Chairman concerning policies and practices relating to Board operations and with respect to Committee size, composition, and organization. Now, as far as the Committee's ethics responsibilities or concerns, the Committee is required to review and assess the adequacy of the Code of Ethics on an annual basis and review the independence and objectivity of members of the Board on a periodic basis. And as General Counsel Darrell Buchbinder indicated and as the Chairman indicated, it should be noted that all Commissioners have updated their respective lists of financial, business, corporate and other interests and involvements in furtherance of the consolidated process for periodic updating instituted by the Office of General Counsel. Annual review of the ethical standards in the states of New York and New Jersey is also required by the Committee as well as other standards which may be useful in identifying and determining best practices for the Port Authority, and the Committee may make recommendations to the Board concerning such appropriate ethical practices. Now, the Port Authority has a long history of dedication to the highest ethical standards and commitment to its public service mission. Our governors in both New York and New Jersey have put a priority on ethics and accountability, setting high standards for all public agencies and officials. The agency currently has numerous policies for its staff to insulate our operations from calculations about politics or personal gain, to protect employees who speak out against perceived infractions through a whistleblower policy and to guard sensitive information against unwarranted disclosure. These policies are included among those that are listed on the screen that you see before you. Today we also have Steve Pasichow here from our Inspector General's Office to provide a form of the training that we use here at the Port Authority with regard to integrity awareness. It should also be noted that the Law Department provides ethics training to staff as well. Thank you, Mr. Chairman.

[Commissioner Schuber] Thank you, Howard, for that report. Before we move on, I want to indicate to the members of the Committee that [inaudible-no sound] It may be a tradition or a requirement, or maybe it's both, the issue of making some form of report about the annual meeting in some of these areas. Is that true?>>[H. Kadin] Yes, that is. That's typically done on an annual basis, and as the Charter says, there are certain responsibilities that have to be carried out by the Committee periodically and annually.

[Commissioner Schuber] And that annual meeting, has that been set? I'm not sure that it has, actually. [K. Eastman] The annual meeting is in April. [Commissioner Schuber] It's April? So we have [inaudible-no sound]. On to Steve's report.

[S. Pasichow] Good morning, Commissioners.>>

[Commissioner Schuber] Good morning.

[S. Pasichow] Commissioner Schuber has asked for an update on our integrity awareness training at the Inspector General's Office, and that's what we are here to do for you. It commenced in 2004, and it has a number of components, and it's evolved since 2004. I'm going to describe for you what we are doing currently. For publicizing the Inspector General's Office and trying to get the education out there, we have a poster that we've put up at all PA facilities. We use a similar poster at the Trade Center, and we're actually rolling out the poster at all construction sites that the Port Authority has. The Engineering Department is assisting with that. What we also do is we post the poster on E-Net

so that it's prominent for all employees to see on how to contact the IG's Office as well as on our website. We have a website that is part of the Port Authority's website, and there are a couple components to that I'll highlight. It lays out what types of things should be reported to the Inspector General, what our mission is, obviously. It also has an online complaint form that anybody who goes online could actually fill out the simple form and transmit it to the IG's Office. It also lays out different programs that we have, like this program, the Integrity Awareness program, our Vendor Integrity program where we actually do background checks on vendors like at the Trade Center and other large capital construction projects. We also have a security inspection division that goes out and does inspections on our security programs, so it describes that as well as our fraud prevention program at the Trade Center, which will also be rolled out to other large projects like Bayonne and Goethals and other large projects such as that. That's how we communicate as much as we can to get the word out about the IG's Office. What we also do is we do training. We started this in 2004. We continue it for the employees. I'm going to go through quickly for you in a moment what the actual PowerPoint is and the training we provide. That training is also provided to consultants and contractors, again, like at the Trade Center, and we're trying to roll that out beyond that.

[Commissioner Schuber] On that, is that mandatory for the vendors?

[S. Pasichow] Well, it's not per contract mandatory, but Commissioner, when we schedule it, they come. It has not been a problem, and it's actually a very good opportunity for the contractors who don't know the rules of government to learn it and ask questions. It's been very successful, and what we're trying to develop now, and we're in touch with Human Resources, is an online refresher course. We have 2 staff members in the IG's Office who, in addition to their other responsibilities, go out and meet with staff in groups, whether it's toll collectors, engineers, procurement staff, PATH employees, but it takes a long time until we get back to the employees as a refresher. It could be years, so what we want to do is get an online course, a little refresher, a couple of questions, just to keep the important items in everybody's mind, the do's and the don'ts. Also, as you know, we do high level background checks on applicants that are coming to work for the Port Authority. We use that opportunity when we meet with them to do the background interview to educate them about the IG's Office so they know what we do, how to get a hold of us, the advice that we can provide. Again, a lot of these applicants are at a high level, so it's important for them to know who we are, what we do, especially when a lot of them come in from private they may not be familiar with what an inspector general does.

[Commissioner Schuber] Do you do background checks for all positions?

[S. Pasichow] It's all high level or sensitive that are determined by Human Resources.

[Commissioner Schuber] Okay, and that traditionally would be--give me an example.

[S. Pasichow] Well, certainly anybody in a security role. We do all security guards that TB&T hires. Public affairs, anybody from a deputy director or even an assistant director or above and any other position that really HR, in consultation with Counsel and the IG's Office, thinks would be prudent for the IG to do a background check.

[Commissioner Schuber] And so as you mentioned, then do you do all the security guards?

[S. Pasichow] We do all security guards, yes. We went back when this started a few years ago. We actually did retroactively all the guards that were on the job at the time, and we've done all new ones since then. Also, if there are high level people that come into the Port Authority, we'll try to make an

effort to reach out to them and to educate them about the IG's Office as well. Also, when we're vetting contractors, whether at the Trade Center or elsewhere, we use that opportunity after we meet with them, also, if they don't know who we are, they're not familiar with what an IG does, we take that opportunity, and there are benefits when they know that we exist, what we do, and we do get a lot of questions. They'll call for things that may not be related to our IG, but they come to us as a source of information, or we'll refer them elsewhere. Then we also started about 2 years ago to start attending pre-construction meetings. When there's a kick-off meeting with Engineering and the contractor and the facility, we have a representative at those meetings, so, again, we can educate them about the IG. We talk about prevailing wage, the M/WBE program, and the importance of enforcing and complying with everything. That's sort of our outreach, and what we try to do is, the message is, we're here as a partner as part of the team. We're not here to play "I got you". We really want to provide you advisory. We want to be an advisor as well as maintaining our independence at the same time, but we don't want people to feel that we are the traditional IG, which we're not. We are here to try to prevent. Traditional IGs years and years ago would come after the fact. They do investigations. They do audits. They criticize. Yes, there is some of that. But what we try to do is we want to try to get ahead of the game, as we've done at the Trade Center, and prevent fraud, prevent problems, and that's why, like some of our large projects, Procurement and the ED has had us sitting in on important projects to try to give advice and prevent. That's something like the Goethals Bridge project. We will sit in and give advice to Procurement and Engineering. Also, what we do is we get the word out. During the holiday time, we'll send out a letter that's signed by the Inspector General, and Steve Plate at the Trade Center, for instance, and send a letter to the contractors, again, advising them the do's and don'ts, that the Port Authority employees do not take any gifts, and the same type of letter goes on E-Net and through a broadcast to all employees, again, reminding them of what they shouldn't be doing. What I'd like to do now is go through the training that each employee in the Port Authority has gone through, or most of them have. We've done over 6200 employees and consultants, and we continue to revisit different groups, and we just were at PATH doing the conductors and engineers so again we try to go--but it takes time. That's why the online review would be a good way to go. What we try to do with the employees is we try to let them see a face associated with the IG's Office. It's always better for them for the initial meeting. We try to dispel misconceptions about the IG.

[Commissioner Schuber] This is in-person training?

[S. Pasichow] In-person training, that's right. We have 2 people, that, part of their other responsibilities, but they go around and do this. It's not the "cloak-and-dagger". We're here. We're humans. We're people. We try to humanize the office.

[Commissioner Schuber] We're from the government, and we're here to help, right?

[S. Pasichow] Well, we try to sell that. Some people buy it, and some don't. But we try to describe how we operate so they understand. And then, what we do is we go through some definitions. We really want to engage them in discussion, because a lot of the people have never really talked about integrity and conflicts, and so we try to engage them. We go through some of the definitions that are affiliated with integrity, malfeasance, misfeasance. The appearance of impropriety is very important, because people don't think in terms of--it's just right or wrong. It's not what somebody may perceive as being wrong. We try to instill upon them the importance of appearance. We touch upon conflict of interest, although not in detail, because Howard, as you know, does a lot of that training, so we try not to duplicate effort there, but we certainly try to get the word out. And something like

accountability, for staff to really think in terms of being accountable in making decisions. Again, it's something that we take that opportunity to try to instill in all employees, and then we touch upon, again, some important words, integrity. We define it, discuss it a little bit. We talk about ethics, and again, it gets the conversation going. People may start asking questions. These are not terms that people are familiar with. It's not the everyday term, and then we also get into internal controls, which is important for all employees to think about. We go over 6 elements, but probably more importantly are the authorization procedures, adequate documentation. Very important for people to document decision-making and how you arrived at that decision so that if there are questions, you can justify it, segregation of duties, so these are some of the internal control processes that we talk about with staff. And then what we do is we get into the specifics. We try to gear our presentation to the group. If it's engineers, we talk about public construction and some of the typical frauds that we see, investigations, and we talk about some of the investigations we make to really bring it to life, whether it's PA employees that we unfortunately have to arrest and prosecute or contractors that work for the PA. We talk about it so they can really personalize it in a certain way. If it's construction, again, we go through some of the more common schemes that we've come across. If it's Procurement, we talk about procurement, whether it's our Procurement staff or other people in the Port in the various departments that deal with procurement. We want to try to hone in to the different typical frauds so that we can sensitise them to that as well as red flags. Again, this is important for people doing procurement for us so that they understand what to look for, and then ultimately, if they see anything, to report it to us, and we actually have a very good working relationship with the Procurement department. They do bring us in. They do highlight any issues that they are concerned about so we can look at them and dispel it. If it's a non-issue, it's a non-issue, but they bring us in early, as most people in the Port Authority do. Then we get into--if it's toll collectors, we talk about cash and E-ZPass, and so, again, we try to personalize it, but I wanted to give you 2 examples there. Then we talk about sort of the 2 common things. You talk about public employees and corruption, so it's gratuities, it's bribery. We get into gratuities, and we define what are gratuities. We go through the legal definition of it and what the components of it are, and then we get into really defining the general rules in that the Port Authority has zero tolerance. We expect and demand that our employees do not accept anything of benefit from people that we're doing business with, people that are seeking to do business with us. Again, these are things that we emphasize, and I know Howard does the same in his lectures. And what's important that we, again, really drill into them is employees need to act impartially, and they need to avoid the appearance of impropriety. And then we do the same thing with bribery. We talk about bribery, and we define it. We go through the legal definitions. Sorry for the-->>

[Commissioner Schuber] That's all right.

[S. Pasichow] We try to keep the employees awake as we do this. Again, we do the legal definition.

[Commissioner Schuber] I've used that too, by the way--

[S. Pasichow] Okay, good to know. And then we talk about some of the employee's behaviors and things that could lead to issues, whether it's problems in the family, divorce, financial situations, so we talk about it, and we try to seek outside help, there's employee counseling that's provided through HR. "Don't go down the wrong path" is what we try to drill into our staff. And why? Why report it? So often these attempts are not reported to the officials, to the IG, and we, again, try to emphasize to the employees that it's important certainly to the agency, for your loyalty to the agency to report it, for other employees, because if the contractor, for instance, is making their overture to you, well, they may be doing it to another employee too, so it's important that you "nip it in the bud", and then

to yourself. If you don't report it, there's always that chance the contractor may make allegations about you because you turned him or her down, and so these are things that we talk out, and it generates good questions and feedback. And ultimately, what we try to do is we explain that it requires a good joint relationship between the employees and the IG, and that's why we emphasize that employees come to us. We try to give them some advice on if you are approached, how to handle those situations and to report it to the IG, so they're prepared in case it does come up. And of course, we talk about if you do go down the wrong path, what the consequences are and probably even more important to a lot of people are some of these. Arrest, prosecution, there are a lot of government employees that go down this path and get arrested. It's their first offense. They're not going to do jail time. But more importantly, you're going to lose your job. You're going to lose your pension. Your status in your family, your status in your professional community, embarrassment to the family. I've had situations before where employees have been arrested and prosecuted, and their loved one left them. Their spouse would leave them and take the children because of all the fallout. "Hey, I thought I knew you, and I didn't know you." Those often are much more consequential than some of the others. And then we cover the whistleblower policy, which Howard mentioned before, and part of the policy, actually, is that we do education every year for the employees, and so we cover that in the same time. We talk about that the employees, through one of the administrative instructions, 15-5.03, employees are required to report wrongdoing, fraud, and abuse to the IG's Office. And then we talk about what is an adverse personnel action. We talk about the whistleblower policy, which is found in administrative instruction 20-1.18, and it has a couple different components. It states basically that no adverse personnel action shall be taken against an office or employee solely as the result of making a truthful report of one of those types of conduct to the IG's Office, refusing to participate in that conduct, and cooperating with the investigation.

[Commissioner Schuber] This is with regard to whistleblowers, this is our policy with regard to that, which kind of adopts the public policy of both New York and New Jersey, I assume?

[S. Pasichow] It certainly--I'm more familiar with—

[Commissioner Schuber] I know in New Jersey this is a matter of public policy and statutory protection, but I'm assuming that that's the case here.

[H. Kadin] Yes, that's correct.

[S. Pasichow] We define what adverse personnel actions are so employees understand what's considered an adverse personnel action and what else is there, and then we talk about if an employee feels they were retaliated against what course of action they should take. They should report it to the IG's Office, and we would do an investigation to determine whether, number 1, an adverse action was taken, 2, was it a target because the employee reported misconduct, failed to cooperate, or actually cooperated with the investigation or failed to participate in the conduct, and ultimately, our responsibility is to investigate and determine whether the adverse action was taken solely in response to one of the above. And that is basically our presentation to the staff, and then obviously, we go through what our contact numbers are, and what's good about the in-person is that we do get a lot of questions, they get to know the people and the presenters often get questions or calls after the fact. It may be something as far as a question about the ethics, or it could be something that they see or heard about, and they want to report it to us for investigation.

[Commissioner Schuber] Do you give advisory opinions?

[S. Pasichow] No, we don't. It's more informal. If somebody calls us and asks us a question, we'll give them advice, but when it comes to the ethical guidelines, we refer them to Howard.

[Commissioner Schuber] Okay, and this is out of structure, but your office is located where?

[S. Pasichow] Our main office is in Hoboken. We have an office at JFK, and we have an office down at the Trade Center.

[Commissioner Schuber] And how big is the office, by the way? I mean, all together?

[S. Pasichow] Currently, right now, with the police units that we took over, we have about 65 people who are all support staff, police staff, investigators.

[Commissioner Schuber] And I know Mr. Van Etten is here with you today.

[S. Pasichow] Yes.>>

[Commissioner Schuber] We welcome him. Interestingly enough, I was thinking about your presentation here. I teach a class on public ethics and public values, and I showed the little icon you were using on the right-hand side, there, in one of those things. I happen to use it myself, and maybe there's a little morality tale here with this. One of the earliest times I taught this class, I asked students to bring in a copy of an ethics code they might have come across, even if it was from their own organization, and one of my students brought in this document, which I swear to God was about 100 pages long in length, and it was quite detailed, as you can imagine, and it was quite colorful, actually. And it had everything you would want in it, from "bells-and-whistles" to the various things you would hope an ethics code might have. And when I looked at the top page, I was trying to figure out where this came from. I looked at it, and it was the ethics code of the Enron Corporation, and the point of that story really, and I use it in classes consistently, even though the Enron situation has kind of drifted to the distant past over some other things in the more recent times, is the fact that we can put together the most detailed code of ethics and procedures with regard to employees for them to be abide, but 2 things are important. One is the education of employees with regard to that, which your office and Howard ably do, and I commend you all for that, and second, the importance that all leadership exercise the same concept. I think in the Enron Corporation the leaders kept themselves out of what was required of the other employees, and I think that's clearly been the case here too that we've done that, and just the indication as Darrell had indicated to me in a report prior to that, which you have indicated also, the issue of complying with the requirements of transparency and potential financial conflicts, etc., that the Commissioners undertake as well as the leadership staff here, I think indicates that is clearly a hands-on issue here. Again, it's something that we have to continue to monitor, though, with regard to the importance of sensitizing people continuously and the education of that without making it a draconian aspect of the job. I commend you, and again, Mr. Van Etten, thank you very much, and I continually follow your reports, also, with regard to the things that you've been involved with. Do any of the Commissioners have any questions of Steve as a result of the report? Tony?

[Commissioner Sartor] No, I don't have any.

Commissioner Schuber] Thank you, Steve. Thank you. Do any of the Commissioners have anything they'd like to add to the Committee meeting today?

[Commissioner Sartor] I would like to comment on the Inspector General's involvement in the World Trade Center.

[Commissioner Schuber] Go ahead, Tony.

[Commissioner Sartor] It's just that their involvement down there has made life a lot easier for the agency. I think if you look back at the amount of monies that are being spent down there, I think the monitors at the IG's Office have done a phenomenal job for us, and I just want to commend them.

[Commissioner Schuber] I would agree with that. I think considering the size of that project and the great deal of money that's involved, I think that's very, very important, so I would agree with you, Tony. Thank you. Anybody else have anything to add? With that, then, I will adjourn--I'm sorry? Jeff, I'm sorry.

[Commissioner Moerdler] Bob, you mentioned earlier about--or somebody mentioned--about the size of the staff, including the police investigatory unit that was merged in. I'm curious to get a little update on how the integration of that unit is working and how you feel the unit is operating.

[R. Van Etten] I think it's absolutely working better than we expected. We are now co-locating them in Hoboken and have changed the name from Internal Affairs. I changed it to the Police Integrity Unit. We had 4 people doing the job. Now you have a whole coordinated group, and Steve supervises that unit, so jump in, Steve.

[S. Pasichow] As Bob had just mentioned, little by little, we've been staffing up. It's taken a little time, but we're staffing up. We've got the Police Integrity Unit, which was Internal Affairs. We've got the Civilian Complaint Investigation Unit, and we've got Absence Control Unit, so those are 3 units. Pending some promotions, we then interview. We then select our own people that we think would do a great job, and to this day, we've brought on a number of staff that we're very, very pleased with. Absence Control, the numbers last year were a bit higher than we're seeing it this year. We're hoping that that's a deterrent effect that we're proving. There are investigations that are ongoing, that, when they complete, we think will also send a little bit of a message also out to the staff, and we hope to get those Absence Control numbers down even more so, so we think it's been good, Commissioner.

[Commissioner Moerdler] And in terms of the--my concern is with the more substantive--maybe that's not the right word-- the more serious events being investigated by the Integrity Unit, do you feel comfortable that the staff is up to the job, is focusing on the right thing? Are we avoiding serious problems? That's my real issue.

[S. Pasichow] We think we are. We are providing the resources that Internal Affairs did not have previously. Number 1, the staffing that we need, that the Commissioners and the Executive Director approved. Number 2, being coordinated with the IG's Office where we have many experienced staff, a lot of former federal agents that work on the staff, in the office, and they are working--what we've

done is we've not only staffed up the Police Integrity Unit with police staff, but we've taken IG police investigators, who are former federal agents, working with them so they have the benefit of that long-term experience, who are experienced at doing those types of investigations with the police staff, and so we're educating them at the same time of doing investigations, and we're looking for the serious stuff, because we want to make sure we're the ones who find the serious stuff, not somebody on the outside, and we think we're doing that. We do have some very interesting investigations ongoing.

[Commissioner Moerdler] Okay.

[Commissioner Schuber] One last item before we adjourn. I just wanted to ask the input of the Commissioners on is when I had previewed this report initially for preparation of this meeting, I thought that having looked at it and heard from the folks about it, I thought it might be a good program. It's one thing for the Committee to review it, as we're doing, which is part of our function. But I think it has some value with regard to maybe previewing it or reviewing it with the entire Board of Commissioners. I'm hesitant to add anything to Executive Board agendas, given the nature of the time constraints we often find ourselves in, but I think it might not be a bad idea, at least here at the beginning of the year, to put a slice of time aside for the purpose of having Bob and Steve and their staff come in and do a quick review to the Commissioners about what exactly we do here similar to the comment that Tony had made here with regard to the impact it's had at the One World Trade Center. I'll listen to you as to what you think the idea-- Jeff? Tony?

[Commissioner Sartor] I'm sorry. I didn't get that.

[Commissioner Schuber] Tony, I said that we might want to preview this report that Steve just gave us for the full Board of Commissioners at an upcoming executive session.

[Commissioner Sartor] I think that would be a good idea.

[Commissioner Schuber] Okay. With that, I think I'll ask that that be scheduled in and scheduled for the staffers for that purpose so that we can get a chance to do that as early as possible. Then with that, are there any other comments or questions that any members of the Board of Commissioners might have of the Committee? If not, then I'll entertain a motion to adjourn and thank those who have come. Second?>>

[Commissioners] Second.

[Commissioner Schuber] All in favor?>>

[Commissioner] Aye.

[Commissioner Schuber] So ordered. The meeting stands adjourned.