

The Port Authority of New York and New Jersey
Committee on Governance and Ethics Meeting Transcripts
May 18, 2010

[Vice-Chair H. Silverman] This meeting of the Governance and Ethics Committee is being held in Public Session in its entirety. In addition, this meeting is being broadcast live on the Port Authority's website for those interested in viewing today's proceedings via the Internet. We have one discussion item, it's the annual review of the Board, and Howard Kadin will lead our discussion.

[Howard Kadin] Good morning Mr. Chairman, members of the Committee, ladies and gentlemen. It's my pleasure to speak with you this morning about several aspects of the Committee's responsibilities, relating specifically to certain periodic required actions, reviews, and evaluations. I'll put these activities of the Committee in the context of the Committee's role with its dual core responsibilities, governance and ethics, as set forth in the Bylaws. In connection with your review of Board performance and Committee effectiveness, I will provide certain summary information regarding the activities of the Board and its Committees, including this Committee. Finally, I'll discuss steps the Port Authority takes to help ensure the independence and objectivity of Board and Committee members. The Governance and Ethics Committee's role, broadly speaking, is mandated under Article VIII.G of the Port Authority's Bylaws, and as further expressed in its Charter. And that role involves oversight of questions with respect to development of and compliance with Agency governance and ethics principles ensuring that the Board and the staff are familiar with and committed to ethics principles and programs and assisting the Board in fulfilling its oversight responsibility with respect to compliance with legal and regulatory requirements on the part of the Agency. The Governance and Ethics Committee's required periodic activities include certain governance areas, including assessments of the performance and effectiveness of the Board, its Committees and the Executive Director, as well as certain ethics areas, including Code of Ethics adequacy, the independence and objectivity of the Board and Committee members, keeping abreast of ethical standards in the States of New York and New Jersey, and requiring executive staff to review Agency operations to identify wastes and inefficiencies and to take appropriate remedial steps and publicly report these actions. I'd point out that there is a certain interrelatedness between some of these activities and other prior Committee activities. For example, with respect to ethical standards in New York and New Jersey, the Committee will recall that in February 2009, the Committee was instrumental in recommending to the Board the adoption of a Code of Ethics for Port Authority Commissioners. And in so doing, incorporating in the general standards of conduct and the Commissioner's code, applicable requirements of law which are substantially similar in the two States with respect to unsalaried public officers. With respect to independence and objectivity issues, the Committee will recall that in December of 2008, there was an Office of Inspector General report on the independence and freedom from interference of his office in the conduct of his responsibilities pursuant to the Committee's Bylaw mandate that it ensure the continuance of the OIG's freedom and independence. Now, with regard to Board activity for the year 2009, as you can see, the Board had a very active 2009 with 15 public Board Meetings, including at least one meeting in every month of the year. The Board also met in Executive Session in conformance with the Open Meetings Policy. I would point out that while each of the subsidiary corporations of the Port Authority--that is to

say the Port Authority Trans-Hudson Corporation, Newark Legal and Communication Center Urban Renewal Corporation, and New York and New Jersey Railroad Corporation--while each of those subsidiaries have been organized to have their own Bylaws and Board structure, the Port Authority's Board of Commissioners, as you know, serve as Directors of these Corporations and their functions are incorporated within the Port Authority's activities. As you also know, since September of 2008, the Commissioners have increased the number of Board Meetings to dedicate certain meetings primarily for the purpose of discussing matters pertaining to the redevelopment of the World Trade Center site as necessary, and there were three such meetings last year. With respect to the Governance and Ethics Committee's activity, 6 meetings overall, a Committee Charter adopted February 21, 2008, a Commissioners Code recommended for approval to the Board on February 19, 2009 and adopted by the Board on the same day, a review of staff financial disclosure compliance December 17, 2008 meeting, a report received from the Inspector General December 17, 2008, on independence, and the Committee also heard a detailed discussion on Enterprise Risk Management. In terms of Committee activity in 2009, as you know, the Bylaws have established 7 standing Committees. They are Finance, Audit, Construction, Operations, Capital Programs/ Agency Planning, this Committee--Governance and Ethics, and Security. Again, a similar Committee structure exists for each of the Board of Directors of the Port Authority's subsidiary corporations. Also from time to time, the Board has established Ad hoc Committees to deal with specific issues that may have significant impact on the Port Authority or the region. Thus, the Board has established the World Trade Center Redevelopment Subcommittee to oversee redevelopment of the Trade Center site. With respect to Finance Committee, met 7 times, discussed various items, 17 in total, 14 topics. Consistent, as you can see with the Finance Committee's responsibility for oversight of financial affairs and insurance matters. Capital Programs/Agency Planning met 7 times. 11 items were assigned to the Committee. 11 topics were discussed. And again, these items are consistent with the Committee's responsibility for oversight of the Port Authority's capital and strategic plans and review of long-term planning for development of new facilities and initiation of new business and activities, among other things. Construction, which has oversight of all construction of the Port Authority, agreements for acquisition, purchase, lease, or use of real property, and associated rights and purchase of associated materials, met 7 times during 2009. 10 items were assigned to the Committee, and the Committee discussed 12 topics. Operations, which also has a number of this Committee's members on its staff, has oversight of all facilities and properties owned or operated by the Port Authority, agreements and contracts for acquisition and purchase of equipment, materials, supplies in connection with that, sale of real or personal property owned or operated by the PA, and personnel matters. Operations met 10 times, discussed 30 topics. 45 items were assigned to the Committee. And Operations authorized 10 items, as you can see, as well. The Security Committee keeps informed on security matters, needs of the Port Authority and Port District. It met twice. Two items were assigned to it, and numerous topics were discussed. Audit Committee, which just concluded its meeting this morning, has oversight of quality and integrity of the Port Authority's framework of internal controls. Among other things, it oversees the activities of our independent accountants, arranges for the annual independent audit of the Agency's books and accounts. Audit meets quarterly, discussed numerous topics, notable among which is Enterprise Risk Management. Audit has discussions on a regular basis with General Counsel and the Office of Inspector General. Audit authorizes retention of Deloitte and Touche as an independent auditor. World Trade Center Redevelopment Subcommittee met 14

times. 53 items were assigned to this Subcommittee and numerous items were discussed. Now I'd like to take an opportunity to speak with you briefly with respect to the Independence and Objectivity and Board and Committee members. The key here is we want to try and enable conformance with relevant laws on the part of the Board and Committee members. We want to avoid Conflicts of Interest and the appearance of impropriety. And General Counsel is a pivot point with respect to the flow of information to and from the members of the Board. You can see that Commissioners receive ethics materials from General Counsel when they join the Board. There are briefings on a periodic basis from time to time. And, as you know, Commissioners are asked to provide information with respect to their financial business, corporate, and other interests and involvements. And that occurs on a regular basis and there is a process that has been instituted for updating of that information on a quarterly basis, as well. So you have this information flow to and from the Commissioners. And in the Office of General Counsel, files are kept with respect to this information. A composite list of interests and involvements without identifying information is prepared for use by the staff in connection with the Port Authority's activities. Board calendars are reviewed before each meeting to ensure that any potential issues are flagged and discussed for appropriate consideration by the Commissioners. I would point out also that the Code of Ethics for Port Authority Commissioners has formalized the requirement for certain disclosures to be made to General Counsel. And, with that, I would conclude the presentation.

[Chair H. Silverman] Thank you, Howard. Any of the Commissioners have any questions for Howard, or otherwise?

[Comm. A.Coscia] I guess partly a question and partly a comment. First, Howard, I appreciate all the effort you and the Law Department and the Secretary's Office put into this. As you know, this was an initiative that was part of our Bylaw revision, which was pretty substantial in terms of modernizing the way that the Port Authority does business and addressing a lot of the concerns that existed relative to the transparency of our operations. And this Committee formed sort of the ability for that effort not to have been a formalistic effort that concluded when the new Bylaws were adopted, but something that had real, sort of, life to it that would continue to adjust as circumstances necessitated. And I think that this Committee is the anchor for that and staff support of that is critical. And I appreciate just how comprehensive this has all been, and I appreciate the work that our Chairman has done in that effort, because I think that that leadership, in terms of bringing governance experience in the private sector to join with what's happened in the public sector, is valuable. So I am, first of all, grateful to the fact that we have not sort of abandoned this process, but continue to refine it. The one comment I don't think you covered, but I want to, I guess, make certain that we do this on a regular basis is that our Commissioners are separately appointed in two States, and a result of that have a compliance obligation under State Law in the State of New York and the State of New Jersey. And I guess it is important for us to make certain we have in place a mechanism through the General Counsel's Office and the Secretary's Office to ensure that apart from whatever obligations may exist based on our Bylaws and our governance structure, that the extent to which there are filing requirements or other things that happen--that Commissioners are alerted to that and that we keep a tickler system to ensure that each Commissioner files whatever disclosure statement is required, that as changes happen-- and I raise this because the Governor promulgated a new Executive Order recently and there was some questions as to its

applicability to Commissioners and in what form, and I think that that kind of guidance is relevant absent each Commissioner going out and retaining counsel to ensure that they're doing it.

[K. Eastman] We do that, as you know, and we consult with General Counsel and Howard on all the matters to get their legal opinion on that, as well. We do, particularly on financial disclosure and other matters like that.

[Comm. A. Coscia] I would suggest, and I will defer to the Chair on concurring with this, that this Committee receive a report on that issue. That, in fact, there is a docket system that requires compliance and filing so that we know well in advance that a particular Commissioner may be behind on a particular legal obligation they have relative to filing. You know, this Committee could--I mean, I frankly don't envision it happening and I think that's a very good thing, but I think that this Committee should have a early warning system that comes from the two of you that a particular Commissioner is sort of behind in their reporting requirements or that there are certain problematic issues associated with it. And I say that without wanting to even remotely encroach on any of the jurisdiction of the IG or the Law Department. And you'll do your best to keep those things separated, as well.

[K. Eastman] Yeah, and, in fact, we have, in some instances, certifications to the State that we need to do, particularly on training and on FDS.

[Comm. A. Coscia] Okay, okay.

[D. Buchbinder] Well, in fact, we have that system in place now, as you know, since most of the Commissioners are regularly pestered by me or Howard for updates on financial disclosure information, so that we can perform the appropriate monitoring. Also, in New Jersey we work relatively closely with the New Jersey State Ethics Commission to make sure that no New Jersey Commissioner misses a filing deadline. We also monitor the filings because we use that database, as well, to monitor Commissioner's activities. In New York there is no requirement that a New York Commissioner file. What we have done over the years is suggest that Commissioners review their activities in the context of the New York State Financial Disclosure form, and either provide us with that form or provide us with comparable information. Last year we implemented a process. We used to do this annually and then periodic pestering. We implemented, last year, a formal process where we remind the Commissioners on a quarterly basis of the information that we carry for them and ask them to update that information. It's also a dynamic process, as you know, because in the context of each Board Meeting the Commissioners receive an advanced calendar to try and identify the parties and the interest that the Board may be taking action with respect to, and we discuss with the Commissioners any need for consideration and recusal. The purpose of this Committee--and I think we have that in place. Fortunately, we have not been called upon to report on any misdeeds of Commissioners, which is why you haven't heard anything. But, the purpose of this Committee--one of its purposes--is to provide a center point for just that type of reporting, to deal with just those types of issues.

[Comm. A. Coscia] Good.

[D. Buchbinder] So we're there.

[Chair A. Coscia] I think that makes all the sense in the world. So the only, sort of, housekeeping comment I would make is that included in the reports of this Committee is an affirmation that all filings are made on a timely and fulfilled basis so that we've essentially done our due diligence on that level. And then the only other thing, in terms of future work that could be done, and, again, I think that this also probably falls into the category of we do it already, but you'll also include that, and Howard will include it in the reports to this Committee, is that your respective offices, I think, should be putting in reasonable efforts to determine what public agencies do. And then, not just in the New York/New Jersey metropolitan area, but nationwide, to deal with the governance and ethics balances that are necessary for basically a corporate body politic that operates as a corporation with an independent Board. But where it is essentially an entity with one stockholder, the public. In this case, it's in the form of the State of New York and New Jersey. And that's something that is, I mean, the things that we do today are not the things we did 10 years ago and they're not the things that we did 20 years ago, which makes me believe that there are people out there wrestling with these issues. And if there is someone who has a good idea, I'd certainly like to know about it. So, a portion of your report may very well be, also, discussions that we have had, and there's no reason to wait for these meetings. The Chair, I'm sure, will entertain suggestions along these lines. So it ought to be a more continual R & D process on how we can do this better. If someone else is out there and has come up with a reasonable mechanism to give a greater level of confidence in the openness and transparency of how we operate, that would be a helpful thing. Okay, that's all I had.

[Comm. A. Sartor] I just wanted to commend both the Secretary's Office and General Counsel's Office for your efforts. I've been here about 11 years now, I guess, going on 11 years, and it's a much better system now than existed a number of years ago. So, I commend you for that.

[D. Buchbinder] Thank you.

[Chair H. Silverman] All right, is there any other business to come before this Committee? If not, we stand adjourned. Thank you very much.