

AMERICAN ASSOCIATION OF PORT AUTHORITIES
2013 PORT ADMINISTRATION AND LEGAL ISSUES SEMINAR

APRIL 10, 2013

ETHICS HYPOTHETICALS

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INTRODUCTION

The following entirely fictional facts should be assumed in the discussion of each of the following entirely fictional hypotheticals:

You are the General Counsel for MegaPort. MegaPort is an independent authority which owns and operates maritime facilities including a container and cruise ship terminal. A seven member Board of Directors (appointed by the Governor) manages MegaPort. The MegaPort Board hires the MegaPort Chief Executive Officer ("CEO"), and the CEO manages the operation on a day-to-day basis. The General Counsel reports directly to the CEO. The CEO prepares the General Counsel's annual performance appraisal and makes decisions about annual raises and bonuses. MegaPort has approximately 1,100 employees.

The CEO, with the consent of the Board, promoted you to the General Counsel position last year, and just awarded you a substantial bonus. When he handed you the check, he told you how much he admired your "can do" attitude. "You never give me a lot of legal mumbo-jumbo. You always find a way to get the job done."

Hypotheticals

1. A manager from the MegaPort container terminal, Judy Jones, with whom you have worked occasionally over the years and who's nearing retirement, comes into your office, closes the door, and says:

"Dave, can you keep this a secret? You've always given me such good advice. I got addicted to painkillers after my back surgery, so I'm pretty much doped up most of the day. I've driven two of our trucks into the harbor in the last six months, and nearly killed a longshoreman. My boss has suspected for months that something's up. Thank god he's my brother-in-law. And that's not the worst of it: I've been stealing cargo to pay for the pills. Just little stuff like laptops. What do you think I should do?"

How do you respond?

2. You retain an outside law firm to investigate Jones' misconduct, the loss of the trucks, the thefts of cargo, as well as poor management at the container terminal. The firm prepares a confidential/ attorney client privileged document to you outlining the full scope of the problem. You decide to produce the document to the District Attorney. What step must you take before you do so?

3. Jones sues MegaPort and the CEO personally for age discrimination after the CEO terminates Jones for being impaired on the job and stealing cargo. (The CEO did so only after conferring with you and the Board.) The CEO calls you into her office:

“Dave, I’m sure you’ve seen that Jones lawsuit. Age discrimination! What a bunch of BS. But these lawsuits can be expensive. I’m worried about my life savings: the house, the boat and the pool.... Can you defend me?”

How do you respond?

What happens if, as you’re walking out the door, the CEO says:

“Oh, by the way, you ought to know about this, it’s just a little detail. I sent this e-mail down to the HR Director the day we fired Jones. I’ve got a copy right here. Here’s what I wrote: ‘This is my lucky day. I’ve always been looking for an excuse to fire Jones. She’s way too old to be working here.’ I just want to make sure nobody misunderstands what I was saying. We don’t ever have to show that to anybody, do we?”

Do you tell the Board about the e-mail? Can you still represent the CEO?

4. In connection with preliminary motions in the Jones litigation you argue to the Court that there is “simply not a shred of evidence that Jones was fired for anything other than theft, pure and simple”. You are aware of the e-mail from the CEO to the HR Director, but it has not yet been produced to the other side. Is there a problem here?

What if, instead of litigation, Jones and MegaPort had elected to try non-binding mediation, and you made that same statement to the mediator in an opening presentation?

5. The CEO calls you into her office:

“Dave, it’s time to ignore all the pencil pushers and the bureaucrats. I’ve fired every one of them. And now nothing stands between us and the future at the container terminal: we’ll be buying hundreds of acres of prime waterfront property, extending the berths by several thousand feet, dredging the channel, and buying new cranes as fast as they can make them. You’ve got to understand Dave, this is my legacy, and I think they’re going to name it all after me. I hope you’re on board.”

“And don’t pay any attention to those pointy-headed planners who’ve been saying that it will be at least 100 years before demand is high enough to warrant these new facilities. What a bunch of naysayers! And what about those accountants, predicting that funding for the expansion plan will kill our balance sheet and destroy our credit rating? They just lack vision.”

What do you do if, when the CEO presents this plan to the Board, she excuses you, the planners and the financial analysts from the room? What do you do after the meeting when you learn the Board is fully behind “this visionary plan for the future?” What do you do if the CEO tells you she’ll fire you if you tell the Board about your reservations about the expansion plan?

6. The CEO calls you into her office again.

“Dave, I need help on a matter that’s really important to me personally. As you know, I’m on the Board of the Home for Orphaned Refugees. Our big fundraiser’s coming up. You work with all these fancy law firms. Well, it’s time for them to pony up for a good cause. I need at least \$250K this year. Lean on your lawyers. If they want to work for us, they’ve got to get with the program.”

When you express concern about the inherently coercive nature of those solicitations, the CEO reminds you that this is a really great cause, that you’ve always been able to find creative legal solutions to problems, and that she’s sure this will be no exception. Assume it would be a violation of the State’s Conflict of Interest Law for you to pressure the law firms as the CEO has suggested. What do you do?

7. The CEO calls you back into her office the next day.

“Dave, remember that Board meeting where I sold that crazy expansion plan? Oh that’s right, I asked you to leave the room. Well anyway, the Board wants me here at MegaPort to see the plan through to the finish, but my contract is about to expire. I need a multi-year extension with a generous annual raise. Maybe private school tuition for my kids? Can you get that for me? My family and I are counting on you?”

How do you respond?

8. The CEO calls you into her office the day after inking a ten year contract with MegaPort.

“Dave, the Senator called. His campaign’s short of cash, and he’s been such a good friend of ours. I’ve been leaning on the finance team here, and it took some persuading, but I got them to agree to siphon all our cruise terminal revenues directly to the Senator’s reelection campaign. Don’t worry. It’s only temporary, just until election day, and we’ve created a second set of the books so nobody’s going to find out. And by the way, there’s an open seat on the Appeals Court. The Senator could be really helpful to you here. He might just be looking for a problem solver like you.”

What if you can’t talk her out of it?

9. You take your concerns about the financing plan for the Senator's reelection campaign directly to the Board Chair. He says, "sorry, who do you think put me here in the first place." What do you do next? What if the Board fired you after you raised these concerns?