

TRANSCRIPT FROM CALPERS' "BOARD SELF-EVALUATION"

JANUARY 19, 2017

MONTEREY, CALIFORNIA

Rob Feckner: I think that's always problematic. We don't have everybody's input, and as Richard [Costigan] aptly pointed out, a lot of us did not choose to make comment on some of these things rather than just taking a vote, so hopefully in the future we think about that a little more deeply and actually put in our comments that we think, because we can get a lot more from the comments than we do just looking at a number on a spreadsheet, so... Anybody? Bill [Slaton]?

Bill Slaton: Yeah, I have some more comments, and I wrote them out and thought about this a lot because after I read these comments I thought about them and I shared some of the concerns, and as I look at these and think back over the last 18 months – and Mr. Jelincic, I'm going to address you in this – that as I've observed, you've taken unilateral actions that to me are clear violations of fiduciary duty, and by implication placed our fiduciary duty as a board at risk, and the common theme is the disrespect for the governing rules of the organization.

To be more specific, I'm talking about the disregard for confidentiality of materials or decisions reviewed or made by this board, but I want to be very clear about this. The comments I'm making today have nothing to do with Mr. Jelincic's views regarding the issues this board faces, nor is it about his fair challenges to staff and other expert opinions presented to us, and in fact, I believe very strongly that minority views properly conveyed are vitally important to fostering honest and robust decision making and board oversight of this organization, so given that there have been multiple times that this has happened over the last 18 months – and I say this only very reluctantly – there are in my view only two possible solutions to protect the fund from the risk of continued fiduciary violations. The first would be for Mr. Jelincic to voluntarily resign his board position. Although it is clear that he possesses extensive knowledge in the investment arena as well as valuable historical perspective on all matters pertaining to CalPERS, this behavior – again, in my opinion – negates the advantages he brings to the board and the constituency he represents. If he chooses to remain on the board, I ask the board president to place on the board agenda as soon as possible an action item regarding a sanction or sanctions to be imposed by this board, and one sanction I ask to be considered would prohibit Mr. Jelincic from attending any closed sessions conducted by any committee or the full board

while he remains a member of this board due to his repeated unauthorized disclosure of confidential material.

Rob Feckner: Other comments? JJ [Jelincic]?

JJ Jelincic: You can think about it, Bill. You've had the questions – the responses for a while. I'm going to ask you to be specific about it. Let me point out: I have been the source of every single confidentiality breach since I've been on the board, and in one case, several of the board members actually beat up on me, and Ron [Lind] came to my defense and pointed out that, well, JJ could not have linked that particular piece of information because it has not been given to any board member, so I am not the source of all leaks.

Let me give you a very specific recent example. There was a back room deal meeting which I think was mischaracterized, but that's how it got labeled, that involved the Department of Finance, our staff, and some of the unions. Now, I don't know who was at that meeting, but I do know that Dave Lowe was one of the people at the meeting, and in Dave's description of the meeting, he complained that he was told the expected return on the portfolio was 5.8%. That number has not been used in open session anywhere. He also complained that he was really disappointed that no board member had told him about that number, so given who the players were, that leak either came from the Department of Finance, which I don't know how they would have it, or it came from our staff. That's a very specific example. Clearly, I was not identified as the leak, but give me the specific examples you're talking about – one we can talk about.

Bill Slaton: Well, what I'm making as a recommendation is that this be taken up by the full board, and that would be giving plenty of time for everyone to have a chance to weigh in without having to do it on the fly, so that's what I'm suggesting that would give you time and other members of this board time to consider this issue and to prepare a defense and a.....

JJ Jelincic: Okay, then I will say that I cannot refute an unspecific allegation, but I also know that there are people on this board who have been taking shots at me for years and years, and so I am real careful not to disclose things that happened in closed session.

Rob Feckner: All right. Ron [Lind]?

Ron Lind: You know, I was mentioning to Bill [Slaton] at the break that, you know, I keep talking about this previous board that I was on that was fairly contentious, but we had these board self-evaluation meetings which typically turned into like a 4-hour deal, right? And we needed it, and rightly so, and what we did was we sort of identified issues and

then focused on the ones where we had concerns, and this – you know, the stuff that we’re talking about now – would clearly be one of those concerns, and talk about best practices and what could we do differently, and how best to do this and that and all that, and maybe there’s a way to do that. I’m just concerned that, Bill [Slaton], you’re suggesting moving from focused discussion and hopefully improvement to like a trial, which sort of gives me the creeps a little bit. I’m not sure we need to get to that point in order to sort of work through this.

Rob Feckner: Dana [Hollinger]?

Dana Hollinger: Well, in looking at our evaluations, clearly this is an issue that I think maybe it’s an undercurrent, but maybe it’s time it rises to the surface. I’m not sure the exact methodology, but I think for us to strengthen ourselves as a board, it’s important that we deal with it. I’m thinking similar to Ron [Lind]. And Bill [Slaton], I’m not sure exactly a level of a trial, but I think it’s important that maybe we get some consensus to JJ’s point too on exactly what these issues are and do discuss them, because I think it’s reached that point, and I think we would be better served as a board. I take input for methodology, but to go through some type of process.

Rob Feckner: Richard?

Richard Costigan: So just a few minutes. First, I want to back up. I think this report and the information that has come out is very important, and first, I want to appreciate everybody on this board. I mean, before we get into this at this second, I have worked with a lot of boards. I have worked in very stressful situations. I know I can be a complete pain in the rear. I know I can be short and all that, and I appreciate both the forgiveness I get from members of this board and the understanding, and I want to say, Rob [Feckner], while there are issues – I mean, politics and in policy – I don’t feel that I don’t get the opportunity to voice my opinion. I mean, I know we had our little soliloquy yesterday, Mr. Slaton, about did my questions go afar, but it got handled well, which is exactly the way it should be done, and so I don’t want us, first of all, to lose sight of where we’ve come significantly far. I mean, as Eric said, this is a snapshot in time, and again, I think that the good thing is: It is the congeniality. I was talking – I think it was with Dana [Hollinger]– the other day, I think sometimes we have become too congenial. I mean, I think it’s actually reflected in some of the comments, is if we don’t think that the committee structure is correct or that the agenda is proper, we should raise those issues, and no one should feel threatened.

I mean, when you look at some of the comments, some of this is communication and some of this is just process. At times I don’t think we want to offend each other, and that’s

why I always try and think that at last month's meeting I know I got short. It was contentious. A lot was going on around me, and you come back, because it was never meant to be personal and I think that's the goal. I think where we are right now with Mr. Jelincic and others – and I'm not going to drag [General Counsel] Mr. Jacobs] into this – but a part of the struggle sometimes is: What are the rules? I think Mr. Jelincic is right. We talk about a lot of innuendos and we may not be happy with something, and I'm not happy with what the press says, you know, on some of the articles that are out there right now to the actions we've been taking, and now what do we say or not say? And part of it is tone, and I recognize I have significant tone issues. I mean, I try to – I think, it was, Karen was still here. She would say "You've got to take your lawyer hat off sometimes for questions," which is exactly what my wife says to me when I'm talking to the kids. Lose the tone!

But that's who we are. I mean, that's part of it, and I think, Mr. Slaton, as you raise these issues – and I've spent a lot of time talking with Mr. Jelincic – I mean, I always say "Is it true? Is it not true?" What's the problem? If you've got an issue, raise it. I think a lot of it does come to guidance. I struggle as to what we can we talk about or not talk about? Where is confidential or not confidential? If I don't agree with a policy decision, do I lose my right to express that and say because we're 13 independent people – some are elected by constituency; some are appointed – we have a process question here, and I think part of it, I would just suggest a little bit along the lines of – Ron – we jumped fairly quickly.

I'd like to pull it back. The outcome may still be the same, but what's the process? If in fact Mr. Jelincic has disclosed something, what was it? And in fact, absent the two things that you suggested, based upon what Ms. Dunning [attorney who gave fiduciary training earlier that day] told us, there is an outcome or a penalty – I'm lost for words right now – but the action has a repercussion, so if there's in fact a repercussion before we get to yours, what was the action, what was the violation, and then there's the repercussion. So, I hate the word 'trial' as well, but all of us are guilty of it. I mean, it's very difficult sometimes to wonder, because there's so much information, what was in closed session? What wasn't in closed session? What did I slip or not slip on? And that's why I let the narrowness of continuing what is in closed session, because it helps, but I think a healthy, vigorous debate and pointing and challenging people is good, but I also don't want us to lose sight that overall it looks like the health of the organization is good and in a good place, and we have stuff to tinker with, but I do think, JJ – and you and I have talked about this – a lot of it is in delivery. It's in tone. It's pointing out, I think – and you and I have spoken – I have encouraged you to talk to Rob [Feckner] if there's an issue.

I mean, you rightly brought to our attention a couple weeks ago the calendar. You called me. I said put it in writing to the chair of the government's committee and vice-- is that a

policy issues related to the calendar or, you know, we got it worked out. We found out exactly what the problem was – very simple, very matter of fact – so a lot of it is just process. So I know, again, exactly where you're going. I just...

Bill Slaton: My concern is the part that I'm talking about is not about tone. This is about very specific potential violations where confidential information has been released without the authority of this board, and so that's what I'm trying to get to, and I did not have a vehicle for doing that besides raising this issue and then giving us time to schedule it and talk about it.

Richard Costigan: And that's a great point. The thing that goes right back to the process is if there's a violation, is it something that's brought to the president's attention with the general counsel opining on it, or is it exactly as you're suggesting? I mean, what's the remedy to get there? I mean, something's happened, you know, between this board meeting and our next one. If something pops up, do we wait for the calendar to bring it up, or what's the process? Great governance issue.

Rob Feckner: Priya [Mathur].

Priya Mathur: So, I don't think it's appropriate to characterize this as a trial. First of all, it was just a recommendation. Second of all, this is not really about punishment. It's really about a significant risk that faces this organization around a breach of confidentiality, and I did not hear Bill [Slaton] suggest that every breach of confidentiality has had a single source, but I think we've all been in the room when there have been clear breaches by Mr. Jelincic, and I do think we should share what those incidents were. Obviously, that needs to be transparent and given an opportunity to respond, and I think that is appropriately agendaized at a future meeting, and so I think that is appropriate. That is our job – to protect this organization and to protect our members by protecting this organization, so those are my comments.

Rob Feckner: Thank you. Anybody else making comments? JJ [Jelincic]?

General Counsel Matthew Jacobs: I'll just pipe up if I might to talk about what the governance policy says with respect to this issue, and I'll just read it to you: It's in section B on page 7, and it says that the board reserves the following powers for itself. All remaining powers are delegated to the committee of the board, and then the second thing it identifies is to conduct discipline if a member fails to meet board standards of conduct, and it then goes on to say that the board will be responsible for implementing public disciplinary action against a board member whose conduct fails to meet the standards outlined in or violates this governance policy, or whose conduct is otherwise inconsistent with board policies. Discipline will be at the discretion of the board after considering the

nature and number of violations, and may include, but need not be limited to: admonishment, censure, temporary termination of the board member's travel privileges, or the requirement of additional training. Any public discipline will be imposed in open session at a duly noticed meeting of the board and only upon adoption of a motion by the board. So that's what it says. There is a parallel provision that talks about the discipline that the president can impose privately, but that's not what is on the table per Mr. Slaton's request.

Rob Feckner: Thank you. I will say, to be completely honest, that I was against doing this in open session.

Matt [Jacobs] and I have had many conversations about it. I thought that the initial discussion should be done in closed until we knew where we were going to go, but then on second thought, if we conduct the business of our country on Twitter I guess we can have this meeting here. So, you know, the request has been made to agendaize it. I think Mr. Jelincic is correct; he needs to be able to hear all the information factually and be able to react to it and respond to it, so I will work with [CEO] Marcie [Frost], and we will put it on an agenda in the near future about this discussion, and then the board can take any action that it so chooses to do. This is a tough topic and a tough discussion, but we can continue to handle it collegially and as professionals, so...

Rob Feckner: JJ [Jelincic]?

JJ Jelincic: Yeah. I think I should acknowledge that I was the one who asked to do it in open session, because I think our members and the board need to actually have a conversation. I also believed that it would be less hostile if people were held accountable for what they were saying, so it's an open session because I asked it.

Rob Feckner: To be honest, I did call JJ to give him a heads up that this was going to be a little problematic and ask him his position one way or the other. Originally, he thought closed was a good idea. On further thought, he thought open was a better place, so that's where we ended up.

JJ Jelincic: I'll point out that Bill [Slaton] has some very specific violations in mind that at this point he has chosen not to disclose, but there have been a few times that I've been called in to talk about violations, and two of them that I remember: We were investigated by the SEC. That's public record; you can see that on the SEC website. It was [General Counsel] Matt [Jacobs] not me, that disclosed to this board insider trading. I also got chewed out for raising the issue – we had a vote in closed session – I raised the issue, should we report it out? We were told we didn't have to, but it was Henry [Jones], not I, that disclosed that it was about releasing a report to the board. So if those were violations,

then I don't think I was the violator, and other than that, I don't know what specific ones he has in mind, so I can't respond to those specific things.

Rob Feckner: That's why we'll agendaize – so we can put everything on the table and everybody can have their say. Anybody else? Priya [Mathur]?

Priya Mathur: I'll just ask a question. If some of the evidence is confidential information, what does that mean for whether this discussion ought to happen in closed session or in open session, or both perhaps, such that we don't inadvertently disclose additional confidential closed session material?

Rob Feckner: It's part of what we have to weigh, but if it's confidential information that's already been leaked – and that's what we are discussing – it's already there. We just need not go into any further confidential information, but if Bill [Slaton]'s talking about these things that have already been leaked that were confidential, it's out there anyway.

Priya Mathur: Is that our general consensus opinion? I guess, I just was just asking [interrupted]...

Matthew Jacobs: Well, I think it's a good question. I think that there's a manner of handling it in open session without getting into additional confidential information, and I think that board members and others would need to be sensitive to that issue, but I think it could be handled...

Rob Feckner: ...very cautiously. Anybody else have questions, comments? All right. Well, thank you, and this is not an easy topic to deal with, but one that's been in the background for a while and something that board members thought that we needed to bring forward, so I'm glad we did, kept it fairly level, so let's continue to do so and work through this.