



PORT OF OAKLAND

AAPA
EXECUTIVE MANAGEMENT
CONFERENCE
Napa, CA

The background of the slide is a photograph of a port city. In the foreground, a large container ship is docked at a pier, its deck covered with stacks of colorful shipping containers. In the background, a city skyline with various buildings is visible across the water. The sky is blue with some clouds.

DAVID L. ALEXANDER
Port Attorney

A person wearing a dark suit and a white shirt is holding an open book. The person's hands are visible, and they are looking down at the book. The background is blurred, showing what appears to be a wooden bookshelf. The text "WHAT IS A PORT ATTORNEY?" is overlaid in blue capital letters at the bottom of the image.

WHAT IS A PORT
ATTORNEY?





Advocate/Protector



Consigliere





Shipping Act

- **46 U.S.C. § 41106(1)**

No marine terminal operator may agree with another marine terminal operator (or common carrier) to boycott, or unreasonably discriminate in the provision of terminal services to any common carrier or ocean tramp.

- **46 U.S.C. § 41106(2)**

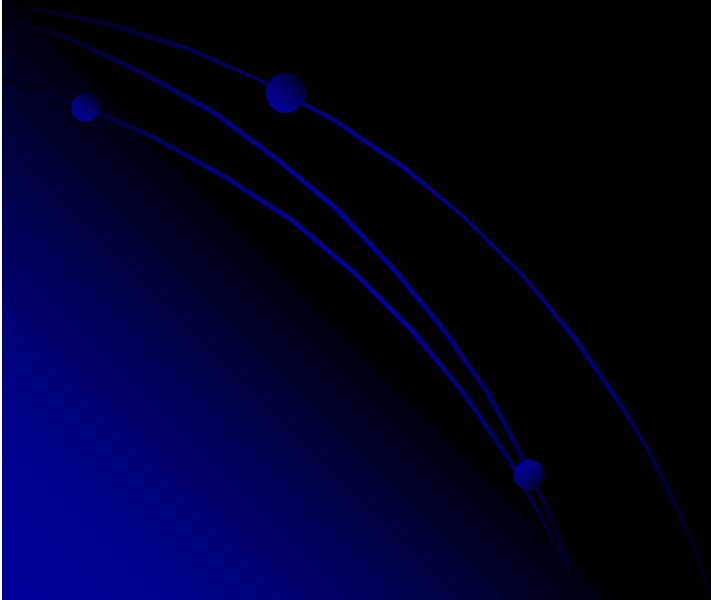
No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

- **46 U.S.C. § 41106(3)**

No marine terminal operator may unreasonably refuse to deal or negotiate

The Negotiation

- Traditional
- Preferred



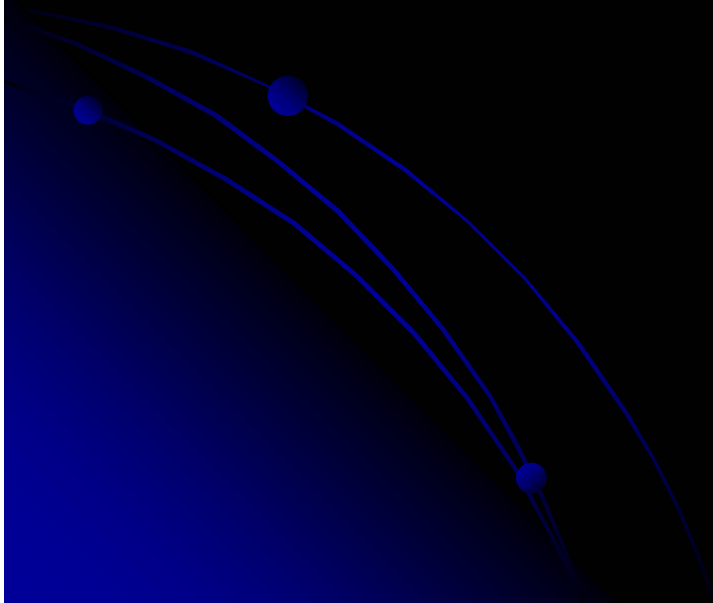
Current Issues



Revaluation



Liabilities and Potential Pitfalls for Commissioners and Staff



Conflict of Interest



Conflict of Interest

Financial interest in agency contracts

- contract is void
- criminal penalties
- ban from holding public office

Staff members may be public officials.

Financial interest in agency decisions

- material financial effect on member or member's financial interests

Incompatible activities

Common law—it just doesn't look right

Security and Insurance







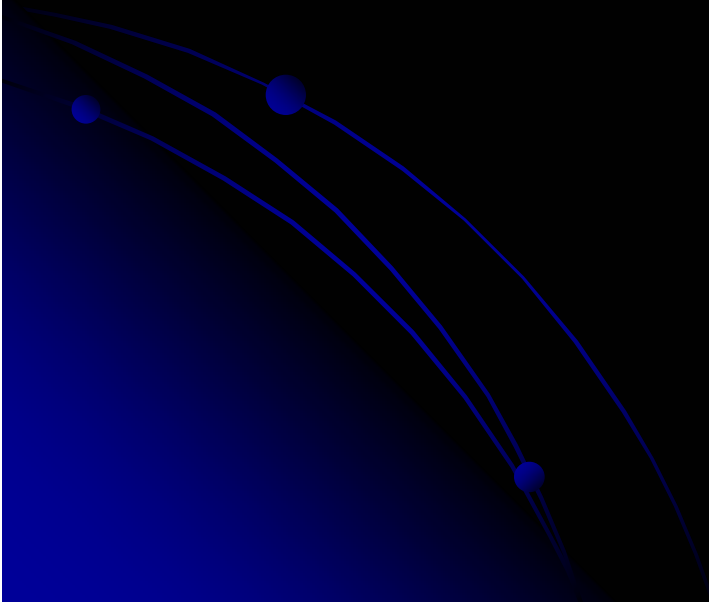


San Diego Lessons

- **Staff may become targets**
- **Speak up!**
- **Read the materials**
- **Tell the bad as well as the good**
- **If its your signature, it is your responsibility**
- **Re-examine your D & O insurance coverages**

Port Governance

- Policies
- Procurement Rules
- Governance
- Avoiding Conflict



Abstention, Recusal, or Disqualification

Abstention: Board member registers an “abstain” on any board vote, but participates in debate and discussions. Abstention does not “cure” or obviate any conflict of interest or any disqualifying event.

Recusal: Board member refrains from discussing, designing, voting on or otherwise acting on any matter that he/she may have interest. During any board discussion and vote, member must publicly disclose the nature of his/her interest and leave the room. Recusal is effective to avoid conflict in most matters, but does not excuse any interest a board member may have in a contract. (A board member may avoid conflict of interest by recusing himself/herself from discussion and action on whether to issue a building permit. However, recusal is insufficient to avoid a conflict where the member is financially interested in a contract with the port for services or supplies being considered.)

Conclusion

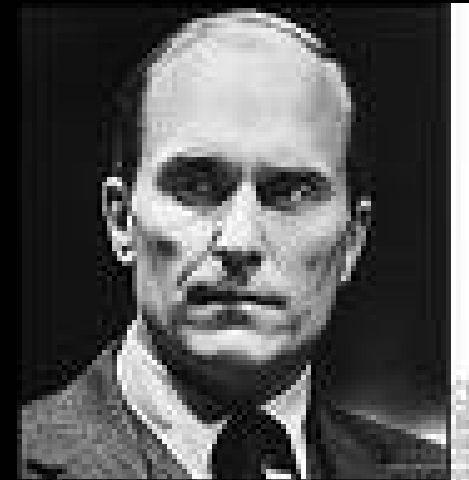
- Does the Shipping Act Apply?
- Why does Commissioner Smith get to vote on this matter?



- Is this a breach of my fiduciary obligations?



- Mr. Smith claims he is a whistleblower and wants to report that we have been dumping toxic material. What do we do?



No harm will come to you while
you are under our care

