

STATEMENT OF FRED F. FIELDING  
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND  
TRANSPORTATION  
February 13, 2003

Mr. Chairman and other distinguished members of the Committee:

At the outset, I would like to again express my sincere apologies for not being present at your last hearing. Although I did have a prior commitment out of the city, I am truly sorry for any inconvenience my absence caused and I want to assure the Chair and the Members that by my absence I meant no disrespect to the Committee or to the importance of its investigation.

I am advised that I have been released from my obligation to preserve the attorney-client privilege and relationship in regard to this matter, so I am prepared to provide any information I can.

Mr. Chairman, after a meeting of the Ethics Oversight Committee of the USOC on October 24, 2002, I was retained as counsel by its Chairman, Kenneth Duberstein, to conduct an independent internal investigation in regard to allegations presented to the Committee by the USOC Chief Ethics Compliance Officer, Mr. Patrick Rodgers, regarding certain conduct of USOC CEO Lloyd Ward.

Mr. Rodgers briefed me on this assignment and the facts and materials he had gathered, and I was specifically directed as follows to obtain any additional information concerning:

- “The financial interest of Lloyd Ward in his brother’s company Energy Management Technologies (EMT) and its parent company West Bank Holdings, LLC.
- Whether or not there were other related communications between Lloyd Ward, Hernando Madronero, Rubert Ward and other USOC staff (information to be

determined by interview with Hernando Madronero with results provided to Ethics Oversight Committee before preceding (sic) further.”

I was advised that the Oversight Committee would reconvene upon completion of my preliminary investigation.

Upon undertaking this assignment, I suggested and was granted permission to expand my charter to permit interviews of others potentially having knowledge of this incident beyond Mr. Madronero.

By way of process, I reviewed all documents provided to me by Mr. Rodgers, as well as the relevant USOC policies and notes of the Ethics Committee meeting related to this charge. I also checked relevant indices and public sources in regard to EMT and its parent company, West Bank Holdings, LLC, and compared notes with Mr. Rodgers in this regard as he had done the same. I then conducted a series of interviews with individuals determined by me as the result of information brought to my attention, and in some instances, I had follow-up interviews. Each of my interviews was conducted telephonically, which is not my preferred method of interviewing, but is an effective method and certainly much more economical, and was the method requested by Mr. Rodgers.

Upon completion of my interviews and fact-finding, and in anticipation of an Oversight Committee meeting, on November 21 I made a brief telephonic oral report of my findings to Chairman Duberstein and Mr. Rodgers. The next day, I was advised by the Chairman that I should prepare a written summary of my fact-finding, so all members of the Committee would have complete access to the information. At or about this time I was advised by both Chairman Duberstein and Mr. Rodgers that Mr. Rodgers had agreed to recuse himself from further participation since he was factually involved and also he and Mr. Ward had disagreed over Mr. Rodgers' work performance.

In early December, Mr. Rodgers advised me that he had discovered additional documents in Mr. Madronero's office, including a Presentation made by EMT to the Pan Am Organizing Committee. He was going to review the Presentation to determine whether it contained information that would have been derived exclusively from USOC documents; he later advised me that his review could not conclusively determine that.

Subsequently in December, Mr. Rodgers advised me that President Mankamyer had been discussing the EMT proposal and the probe with officials in Santo Domingo, and had determined that discussions were still "on-going." I did not attempt to interview President Mankamyer on any of this (and so advised the Oversight Committee) as it was already clear that such discussions had occurred, through the interview of Mr. Madronero. At that time I did question whether Mr. Rodgers had counseled the President as to the propriety of her conducting an "ethics investigation" and discussing the charges about Mr. Ward with others; he said Ms. Mankamyer had told him that this was part of her management review of Mr. Ward in preparation for the January Board meeting to discuss his compensation.

On December 16, I submitted my written Internal Investigation report to Chairman Duberstein. Questions have been raised as to why my report or the Oversight Committee's Report had no recommendations. In simple response, in this assignment, as in prior ones for the USOC, I was asked to merely provide a factual report to the Committee. I was further told that the Committee had been specifically directed by the President to provide no recommendations to the Executive Committee, but only to report its conclusions.

The Oversight Committee met telephonically on December 23 and January 8 to discuss the results of my investigation, as well as other information in its possession, and at the latter meeting to also carefully review the wording of its Report to the Executive Committee. I was invited to attend both meetings, and so can advise you that the Committee had lengthy and thoughtful discussions, and reached the following conclusions, unanimously:

- Mr. Ward's actions created the appearance of a conflict and he later failed to make a written disclosure of this relationship (both actions clearly contrary to the Ethics Code).
- There was a serious lack of sensitivity by Mr. Rodgers in enforcing the Ethics Code, which could have corrected Mr. Ward's conduct at the time it initially occurred and prevented his further conduct and violations.
- There were actions by the President and other USOC officials, especially in leaking information, which violated the Ethics Code and abused the ethics oversight process.

By information sent to Committee members, but not to me, the President attempted to introduce a charge of alleged bribery by EMT into the Committee's debate; it was discussed fully and the unanimous conclusion was that that information was not relevant to its deliberations on the conduct of Mr. Ward. Although I was not asked for my recommendations by the Oversight Committee, at the first meeting one of the members asked if I had any other observations from my review. I responded that this Ethics program, or any such program, can only survive and really work if it is viewed by all as fair and equitable, has bright lines of acceptable conduct and is independent of politics, personalities and work place issues. Unfortunately, from my interviews it was clear there was a "very unhealthy atmosphere" within the USOC, where the open hostility between the CEO and the President was known to all, with a history of spying and feuding. Worse still, there was a feeling among some interviewed that the Ethics Officer had taken sides in this case and should have recused himself from any probe.

The discussions and deliberations of the Ethics Committee were thorough, careful, detailed and candid. The precise wording of its final Report was cleared with every member.

Further, after some questions by one or two members who had already agreed to attend, it was the unanimous decision of the Ethics Committee that no member of the Committee

would attend the Executive Committee meeting – their Report would speak for the Ethics Committee.

After precautions were taken by the Oversight Committee and the General Counsel to prevent the premature disclosure of the Report, it was distributed along with my investigative report to the Executive Committee and to Mr. Ward.