

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE
OPEN SESSION

Monday, October 18, 2010

3:56 p.m.

Hyatt Regency Hotel
320 West Jefferson Street
Louisville, KY 40202

COMMITTEE MEMBERS PRESENT:

Martha L. Minow, Chairperson (by telephone)
Sharon L. Browne
Charles N.W. Keckler
Julie A. Reiskin
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Robert J. Grey, Jr.
Harry J.F. Korell, III
Victor B. Maddox
Laurie I. Mikva
The Reverend Joseph Pius Pietrzyk, O.P.
Gloria Valencia-Weber

STAFF AND PUBLIC PRESENT:

Victor M. Fortuno, Interim President and General Counsel
Kathleen Connors, Executive Assistant to the President
Rebecca Weir, Special Counsel to the President
Patricia Batie, Acting Corporate Secretary and FOIA Officer, Office of Legal Affairs
David L. Richardson, Treasurer and Comptroller
Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs
Katherine Ward, Executive Assistant, Office of Legal Affairs
Jeffrey E. Schanz, Inspector General
Joel Gallay, Special Counsel to the Inspector General, Office of the Inspector General
Laurie Tarantowicz, Assistant Inspector General and Legal Counsel, Office of the Inspector General
Ronald "Dutch" Merryman, Assistant Inspector General for Audit, Office of the Inspector General
John Constance, Director, Office of Government Relations and Public Affairs
Stephen Barr, Media Relations Director, Government Relations and Public Affairs Office
Janet LaBella, Director, Office of Program Performance
Matilde Lacayo, Program Counsel III, Office of Program Performance
Scott Crocker, Executive Director, Kentucky Legal Aid
Terry Brooks, Standing Committee on Legal Aid & Indigent Defendants (SCLAID), American Bar Association
Don Saunders, National Legal Aid and Defenders Association (NLADA)
Linda Perle, Center for Law & Social Policy (CLASP)

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1 P R O C E E D I N G S

2 (3:56 p.m.)

3 CHAIRMAN MINOW: I'm happy to call to order
4 the meeting of the Committee on Governance and
5 Performance. And I would like to take a roll, and so
6 can members identify themselves being present? Martha
7 Minow is present. This is the duly notified meeting
8 according to the Federal Register.

9 MS. REISKIN: This is Julie Reiskin. I'm
10 present.

11 PROFESSOR KECKLER: Charles Keckler. Present.

12 MR. LEVI: John Levi. Present. Who are the
13 other members of the committee? Sharon Browne is
14 present, but she's missing right now.

15 CHAIRMAN MINOW: I think you added another
16 member, John. Well --

17 MR. LEVI: Julie. Julie just said she was
18 present.

19 PRESIDENT FORTUNO: I think it's only four
20 members. That is, the chair, Dean Minow, Sharon
21 Browne, Charles Keckler, and Julie Reiskin, is what I
22 have.

1 CHAIRMAN MINOW: Great. Good. So may I ask
2 for any comments about the agenda or approval of the
3 agenda? May we have the agenda?

4 M O T I O N

5 MS. REISKIN: So moved.

6 PROFESSOR KECKLER: Second.

7 CHAIRMAN MINOW: All in favor?

8 (A chorus of ayes.)

9 CHAIRMAN MINOW: Great. And how about the
10 minutes of our meeting of August 26th? Is there a
11 discussion about it, or are we ready to move to approve
12 it?

13 M O T I O N

14 PROFESSOR KECKLER: I move to approve the
15 minutes of the telephonic meeting of August 26.

16 CHAIRMAN MINOW: If I'm allowed to second it,
17 I second it.

18 MR. LEVI: I'll second it.

19 CHAIRMAN MINOW: Great. And all in favor?

20 PROFESSOR KECKLER: Aye.

21 MS. REISKIN: I'll abstain. I was not
22 present.

1 CHAIRMAN MINOW: Great. Our first item is a
2 staff report on four items. And so I would ask John
3 Constance to come forward.

4 MR. CONSTANCE: Thank you, Chairman Minow.
5 For the record, I'm John Constance, director of
6 government relations and public affairs for the
7 Corporation. And I have provided staff support for
8 this committee.

9 Very briefly, the virtual Board manual, we
10 have done what we have been instructed in terms of
11 providing contact for all of the new board members as
12 well as the current Board members -- or the former
13 Board members regard this.

14 For those of you who are new to this vehicle,
15 this wiki that we have set up, it's one of two that
16 we've set up, one for orientation for new Board
17 members, and the virtual Board manual is one that we
18 are using as a governance device to try to collect
19 anything that would be of use or assistance to the
20 Board going forward, and to put it in the form of a
21 wiki so that it's updatable and accessible. So we've
22 provided that.

1 I have not gotten any feedback. I'm assuming
2 that that's because it's getting rave reviews out there
3 among all of you, and we'll operate based on that
4 assumption.

5 CHAIRMAN MINOW: One thing, John, if you're
6 about to talk about the self-evaluation forms, when we
7 talk about people filling out their forms, one thing
8 they might mention is whether they found the wiki
9 helpful, or whether they've used it for informing
10 themselves.

11 MR. CONSTANCE: Very good. Very good.

12 Regarding the Board and committee
13 self-evaluation process for 2010, let me direct your
14 attention to page 37 in the Board book, which is, first
15 of all, the individual Board member self-evaluation.
16 And let me actually, as an overview, just state, we
17 have three evaluation devices. When GAO arrived on our
18 doorstep in 2007, we had none as a Board; now we have
19 three, at their recommendation, and really, also, based
20 on best practices among nonprofit boards and corporate
21 boards.

22 And let me describe the three. First of all,

1 the individual Board member self-evaluation is an
2 annual device designed for you to individually look at
3 your knowledge and your background and your feelings
4 about your participation as a Board member. And it
5 really is something to inform training more than
6 anything else, and orientation.

7 I think Vic set this up very nicely by
8 pointing out, as he looked at it, that it clearly
9 indicates that we have to, as a Board and as a
10 community, work on some of those items in terms of
11 answering some of those questions or enabling you all,
12 as a group, to work towards answering those questions,
13 I think for your own service.

14 But in most Board settings, this device is
15 just really for your own information. But it is also
16 something that goes up the line to the Governance
17 Committee, and the Governance Committee, as being
18 responsible for training for the Board, can take a look
19 at that and say, okay. This is something we really
20 need to schedule additional briefings on or additional
21 training. That is that particular self-evaluation.

22 The Board self-evaluation itself, which is on

1 page 39 of the Board book, this is designed as a
2 vehicle to evaluate the Board itself, how you all are
3 working together with each other, how the management of
4 LSC is working with the Board, areas that could be
5 improved, areas that could be reemphasized. And also,
6 at the end of that, there is an opportunity to speak to
7 priorities for the Board in the upcoming year.

8 I know this Board is getting ready to embark
9 on a strategic planning effort, which certainly
10 overlaps with this and is related to this. But this is
11 an opportunity to communicate to the total Board areas
12 that you think would be appropriate to take up in the
13 next program year, as a Board, and so where some of
14 those top priorities would be.

15 I can tell you what the previous Board did is
16 they used that as a compilation device. And in the
17 January Board meeting, they would each year have a
18 discussion about those priorities that were laid out
19 for that particular year. So that's really what that
20 design is.

21 And the third item is the committee protocol,
22 of which this committee is very familiar, given the

1 fact that you were the ones that set this up and
2 basically recommended it to the full Board. This is an
3 opportunity for committees to evaluate themselves.

4 And whereas the first two forms -- let me just
5 back up to say this for this year, which is what I
6 would propose. The first two forms are things that you
7 can each individually tear out at this point and fill
8 out and have back to me or to my office as the compiler
9 of this by -- we would request by December 1st. And we
10 will then do the compilation for this committee, and
11 therefore give you an informed view of really where
12 everybody is coming from in this regard.

13 On the committee self-evaluations, I'll work
14 with committee chairs and discuss with you, Chairman
15 Minow, and also with the committee chairs how we should
16 best accomplish that within each one of the individual
17 committees.

18 We can in fact do that. Actually, we can do
19 it while we're here in Louisville to the extent that we
20 can make multiple copies of that and make it available
21 to committee chairs to pass out. And that could get
22 back to us for compilation as well.

1 The important date for us right now in terms
2 of evaluations so that we are -- so that two things are
3 accomplished: one, we're prepared for the January
4 Board meeting to have had this completed so that it can
5 inform next steps for the board; and second of all,
6 that we can report to GAO that all aspects of the Board
7 evaluation, including the committee evaluation, have in
8 fact been done within this year, which is what we had
9 guaranteed to them.

10 Those are the two things that are important,
11 and important about the date, December 15th, which we
12 hope would be the absolute deadline for all these
13 things being done and at least back into my hands to
14 help the governance committee compile the statistics.

15 CHAIRMAN MINOW: John, that's great. Maybe
16 you should notify people who may not be in the room at
17 this moment about the December 1st deadline. And
18 secondly, people who are brand-new Board members,
19 perhaps they should wait until their orientation to
20 fill out these forms.

21 MR. CONSTANCE: That would be great. And as
22 an alternate, I could report or you, Chairman Minow,

1 could report to the full Board in that meeting that
2 this committee received this as a staff report, and lay
3 out some of those deadlines. I can do some points on
4 that as well.

5 CHAIRMAN MINOW: Thank you.

6 MR. CONSTANCE: On the next item, new Board
7 member orientation, as John mentioned to some folks
8 around the breakfast table this morning, I think, given
9 the fact that there is an invitation out to the Board,
10 and particularly the new members of the Board, to come
11 in for a swearing-in on November 19th, the thought was
12 that maybe we could work towards November 18th, the
13 afternoon of November 18th, as a logical time to do a
14 new Board member orientation.

15 That again is something that we need to talk
16 about schedules and recognize what those flexibilities
17 need to be. I would say, however, it is on the to-do
18 list for management to coordinate with this committee
19 and assist in providing orientation for the newest
20 board members. And that is something we need to do
21 going forward.

22 And finally, progress on the implementation of

1 the GAO recommendations. You have in your Board books,
2 starting on page 49, status of the GAO recommendations.

3 Kathleen, could you pass out? I have an October 13th
4 update of this, and for you, Chairman Minow, and for
5 those that we'll be providing this to on the Board,
6 this is a "this just in" item by virtue of the fact
7 that GAO just got back to us the end of last week with
8 the news that they have accepted three additional
9 updates or three additional recommendations as having
10 been implemented in the 2007 GAO reports. Those are:

11 Establishing and implementing a comprehensive
12 orientation program for new Board members. They
13 consider that done, as do we.

14 Develop and implement procedures to
15 periodically evaluate key management processes,
16 including, at a minimum, processes for risk assessment.

17 With the assistance of the Audit Committee of the
18 Board, we have accomplished that. We've had briefings
19 and those discussions at the last two Board meetings,
20 and GAO considers that to be completed.

21 And finally, developing and implementing
22 policies that clearly delineate organizational roles

1 and responsibilities for grantee oversight and
2 monitoring. They have accepted the letter of Vic
3 Fortuno which slightly amended a previously Board
4 action to lay out essentially what those roles and
5 responsibilities are. We've provided that to the Board
6 and we've provided it to GAO, and they have accepted
7 that as fulfilling that particular recommendation.

8 We have three outstanding recommendations with
9 them on the 2007 reports, which we continue to work
10 toward and think that we will have no problem
11 implementing those by the end of the calendar year,
12 which again was our recommendation or our guarantee to
13 our oversight committee and also to the Board. So I
14 think we're good shape there.

15 You also have the work plan for the latest GAO
16 report. And again, we are working to schedule on that
17 at this point, and will keep the board informed going
18 forward of implementation of those recommendations.

19 CHAIRMAN MINOW: Thank you, John, for this
20 report and for your diligent work behind it.

21 Does anyone have any questions for John
22 Constance?

1 MS. BROWNE: This is Sharon. I have one
2 question.

3 On your October 13th status report, on page 2,
4 regarding table 3, at the end is the "Implement an
5 approach for selecting grantees for internal control
6 and compliance."

7 MR. CONSTANCE: Right.

8 MS. BROWNE: It says that by October 8, 2010,
9 there was going to be the risk factor assessment form.
10 Was that done?

11 MR. CONSTANCE: Those were provided, yes.

12 MS. BROWNE: Those have been provided?

13 MR. CONSTANCE: Those have been provided to
14 GAO. GAO is considering that at this point. And we
15 hope we will get back good news that they have accepted
16 that as fulfilling the recommendation.

17 MS. BROWNE: Excellent. Thank you.

18 MR. CONSTANCE: Hope springs eternal.

19 CHAIRMAN MINOW: Any other questions for John
20 Constance?

21 (No response.)

22 CHAIRMAN MINOW: All right. Thank you, John.

1 Let's move on to the next item, which is a
2 report on developments on our research agenda. As you
3 recall, John Levi gave us that assignment to explore
4 what steps we could take to undertake new research in
5 the vein of the justice gap, but more rigorous
6 research, and otherwise to explore how best to document
7 both what the need is and what the effectiveness of
8 services provided may be.

9 Toward that end, John Levi and I have had
10 telephonic meetings at the Justice Department's Access
11 to Justice program, and also with the American Bar
12 Foundation, which is widely known as performing the
13 state-of-the-art research in this field. And through
14 those conversations, the Bar Foundation put together a
15 proposal for a short-term research project and a much
16 more ambitious research project.

17 In the course of their work, in doing this,
18 they recruited to their team and advisory board
19 basically everyone else who I would have thought of as
20 any rival to them as a source for doing this research.

21 So they basically are the show in town, the people,
22 both academics and professional researchers, who have

1 the rigorous empirical skills and also the experience
2 in this field.

3 John Levi has explored the possibility of
4 obtaining funds for the short-term research project.
5 John, do you want to say anything about that?

6 MR. LEVI: Well, I'm learning my lessons
7 because we thought that LSC could fund the mapping.
8 But we've been told that we'd probably have to do an
9 RFP and delay things. And I think we've had a
10 miscommunication here because this was sort of on the
11 order of the justice gap amounts, as I understand it,
12 around -- I gather that Helaine or whatever spent about
13 \$50,000 on those.

14 And the first project would have been actually
15 to map the state of civil legal assistance in this
16 country. There is no such map that exists, and the
17 field and we think it would be terrific. And then the
18 American Bar Foundation was actually going to then
19 raise all the rest of the money independent of us for
20 all of the rest of the project.

21 So, because of this snag, it may be possible
22 that Friends of Legal Services will support it. But

1 anyway, we will try to see what we can to do deal with
2 this, and you'll just have to stay tuned.

3 PRESIDENT FORTUNO: I think -- and this is Vic
4 Fortuno -- given that, as it's been described, this is
5 really the only show in town, we could certainly -- we
6 have funding available, and it's permissible for us to
7 fund.

8 I think that since the committee had taken the
9 matter up and where we would fund it from at the last
10 meeting, certainly if the committee were to consider it
11 at this point and direct us to proceed with engagement
12 of the American Bar Foundation for this limited
13 project, we could go ahead and do that expeditiously.
14 And given that it's, as I said, the only show in town,
15 it would probably qualify for a sole source contract.
16 So we would look at that.

17 CHAIRMAN MINOW: So you're suggesting that if
18 this committee approves it, then the monies that are
19 existing in our budget could be used right now for this
20 purpose?

21 PRESIDENT FORTUNO: Yes. I think that this
22 kind of work is something that we can fund. We do have

1 funds. I think David Richardson is in the room and can
2 confirm for me that we do have funds available. If
3 this qualifies for a sole source contracting, I think
4 that we can proceed if we're given guidance from the
5 committee to go ahead and proceed along those lines.

6 CHAIRMAN MINOW: Well, I wish we had known
7 that, Victor, because then I would have shared the
8 proposal with the committee. But, given what you've
9 said, let me ask the committee: What's your pleasure?

10 MR. LEVI: I think we should do --

11 CHAIRMAN MINOW: As I say, the American Bar
12 Foundation did develop a very thoughtful proposal, and
13 it's what the field needs at this moment. And I
14 certainly think that it would be a good use of our
15 money. It's what the Department of Justice hopes that
16 we'll do. But if people are not ready to make a
17 decision in the absence of seeing their proposal, we
18 can circulate it.

19 MR. LEVI: Maybe we can distribute the
20 proposal to the committee so they have it to see, and
21 then we can take it up by phone in a week. I don't
22 think there's any ability to do this in an orderly or

1 thoughtful way right here.

2 PROFESSOR KECKLER: And one other thing that
3 if you could accompany that proposal with is some sort
4 of brief memorandum regarding the standards and the
5 application of those standards to effectively make this
6 a sole source grant.

7 There are a wide variety of policy research
8 organizations out there, and they may have different
9 levels of skill and insight. But I'd like to see some
10 sort of memorandum that would justify sole sourcing
11 this item. Thanks.

12 CHAIRMAN MINOW: That certainly makes sense.
13 So I don't think we're ready to make the decision at
14 this time. Victor, I would ask you to please make such
15 an analysis and provide it to us. As I say, these are
16 the people in the past who have done the best research
17 in the field, according to their funder, their funders
18 being the National Science Foundation and outside
19 funders.

20 But Charles is absolutely right. There are of
21 course others who could do the research. So if we want
22 to go forward, the idea is to do this as a small grant

1 that would do a mapping of the field, and with a hope
2 to get this going so that we could then map a larger
3 research project.

4 But I think we can't do anything at this
5 moment. So we're waiting for you, Victor. Okay?

6 PRESIDENT FORTUNO: Will do. We'll take that
7 up post haste.

8 CHAIRMAN MINOW: That would be helpful.

9 All right. The next topic is one we do need
10 to spend a little time on. It is within the purview of
11 this committee to address the evaluation of the
12 Inspector General, and our Inspector General, Jeff
13 Schanz, has been incredibly helpful to me as chair by
14 giving me a set of historic documents on past treatment
15 of this issue. And it is somewhat complicated.

16 I will give you the bottom line, and then I
17 will give you a background, and then ask the committee
18 for guidance about how to proceed.

19 My bottom line is that this committee should
20 proceed with designing a process for assessing the work
21 of our Inspector General, and should do this starting
22 as soon as the committee so approves, with the hope of

1 being able to provide this by January. But we don't
2 know if it will be done by then.

3 The complication is this: The last Inspector
4 General resigned over a dispute over whether or not
5 there could be any evaluation, and if so, of what sort,
6 of that office's work. And that led to, of course,
7 attention on the Hill and some criticism of the
8 organization.

9 The Inspector General's authority, of course,
10 comes from a statute that assures independence, and a
11 dual line of reporting, both to Congress and to us, to
12 our Board, which complicates this question of
13 assessment.

14 One thing that is absolutely a point of
15 contention is whether or not the assessment of the
16 Inspector General can be performed by the President of
17 the Legal Services Corporation, or is that a compromise
18 of that Inspector General's independence.

19 And my advice to the committee is that we as a
20 Board pursue this assessment so that we avoid that
21 problem. Even though the past Inspector General
22 actually also raised questions about whether the Board

1 would have a conflict of interest in evaluating the
2 Inspector General, that has not been a question raised
3 by Jeff, and I think it's an inappropriate concern
4 because surely an Inspector General has to be
5 accountable to somebody.

6 MR. LEVI: Martha? Are you a cell phone,
7 Martha?

8 CHAIRMAN MINOW: No. I'm on a regular phone,
9 and there is music coming, and it's driving me crazy.

10 MR. LEVI: We're hearing the music, too, and
11 it's driving us all crazy. Can we do fix that? Can we
12 do something?

13 CHAIRMAN MINOW: It's driving me crazy. I've
14 written Pat. I'm on a regular land line. It's very
15 irritating.

16 MR. LEVI: She's on a regular land line.

17 CHAIRMAN MINOW: I'm on a land line. I've
18 hung up three times and started over. I don't
19 understand it.

20 So comments here on the procedure? I'll just
21 say one more thing, which is --

22 MR. LEVI: Well, the one thing that I'm sure

1 of is that the President of the Corporation cannot do
2 the review. No management can do the review of an
3 Inspector General. It's the Board that reviews.

4 CHAIRMAN MINOW: Yes. That is my
5 interpretation as well. Yes.

6 PRESIDENT FORTUNO: And I agree with that
7 completely.

8 CHAIRMAN MINOW: It's also my recommendation
9 that as we design the procedure for this assessment
10 that we keep in mind the procedure for assessing the
11 President because that, too, will fall in the purview
12 of our committee.

13 And finally, I'd believe it's worth spending
14 time thinking about peer organizations, similarly
15 designated entities that have Inspector Generals, and
16 see how they conduct evaluations. Pat's effort to do
17 so showed that some had no assessment. Some had some
18 assessment. But we have no details about those that
19 did assess what techniques they used.

20 I personally am familiar with the technique
21 known as a 360 degree review. There are other
22 techniques, and I think we should actually spend enough

1 time to come up with a sensible and appropriate method
2 for assessing the work of the Inspector General.

3 Other people's thoughts?

4 MS. REISKIN: This is Julie. I'm familiar
5 with the 360 thing, the 360 also. But I'm wondering if
6 it would be beneficial for us to have maybe someone
7 who's -- I don't know who, but someone outline for us,
8 maybe, a few different methodologies, and maybe we
9 could discuss the pros and cons and as it relates to
10 this specific position. I don't know if that's helpful
11 or not.

12 CHAIRMAN MINOW: Well, along those same lines,
13 it struck me -- I first wanted to have a committee
14 discussion -- but that the next step would be that I,
15 and if I can find anyone to help me, would develop some
16 options for assessment based on what other practices
17 are. The 360 degree review is used by the Department
18 of Justice in evaluating their Inspector General.

19 Anyone else have thoughts?

20 PROFESSOR KECKLER: This is Charles Keckler.

21 MR. LEVI: Wait one second. You know what we
22 think is that somebody on the open line has put their

1 phone on hold a while ago, and that is what's causing
2 this problem. So what we think we should do is cut
3 that line and have Martha dial back in on the other
4 number, the closed line, and that should clear this
5 problem. But otherwise, it's just terribly
6 disconcerting to everybody.

7 Is that okay with you, Martha?

8 CHAIRMAN MINOW: I would agree. I would be
9 delighted to.

10 MR. LEVI: Thank you. So we'll take a
11 three-minute recess for that purpose.

12 (A brief recess was taken.)

13 CHAIRMAN MINOW: This is still an open meeting
14 and I'm the only one who's on the phone. Is that the
15 situation?

16 FATHER PIUS: Yes.

17 CHAIRMAN MINOW: All right. So we're talking
18 about the procedure for the Inspector General review.
19 Charles Keckler, did you have a comment?

20 PROFESSOR KECKLER: Yes, I did. Thank you,
21 Dean. Well, I at some point was going to ask Mr.
22 Schanz to indicate his thoughts on this. It seems to

1 me just -- I've never reviewed or seen the reviews for
2 Inspectors General, but I am familiar with the process
3 used in the Senior Executive Service in the federal
4 government. And in general, that involves some level
5 of self-design by the executive regarding the
6 instrument that then is passed on, and their goals and
7 the satisfaction of their goals on an annual basis.

8 So I think obviously there's some different
9 assessment levels. But it seems to me that most
10 Inspectors General are, among other things, federal
11 executives, and that some aspect of that might be a
12 component.

13 CHAIRMAN MINOW: That's a good suggestion.
14 And of course, the peer review by Inspectors General is
15 also relevant, not that we would replicate it, but it's
16 informative to us. The use of a work plan or a
17 proposal, the goals and reporting in light of them is
18 certainly part of it.

19 I guess the question that I'm raising by
20 identifying 360 degree feedback or some other technique
21 is whether there's anything beyond the self-report by
22 the Inspector General. And I think there should be

1 something beyond the self-report by the Inspector
2 General.

3 I'm not sure what else, but a 360 degree
4 review is one technique which allows for feedback from
5 all the different actors who interact with the
6 individual. Another technique would be to have a
7 subcommittee of our committee undertake to do
8 interviews with people and to evaluate the work
9 product. Another would be to compare the work of our
10 Inspector General in terms of quantity and speed with
11 the quantity and speed of the productivity of other
12 Inspectors General. There are many options.

13 But I think that we should do something
14 thoughtful and mindful, and recognize that we are
15 laying down some practices that would be relevant as
16 well to the assessment that would provide for our own
17 President when that person is in place.

18 MR. SCHANZ: Madam Chairman, this is Jeff
19 Schanz, the Inspector General.

20 CHAIRMAN MINOW: Oh, hi, Jeff. Good.

21 MR. SCHANZ: I think your summation of the
22 materials that I provided to you were right on point.

1 We did give you a brief history of some of the trials
2 and tribulations that had gone for assessing the prior
3 IG.

4 I do want to set the record correct, though,
5 and I used to work for Glenn Fine for ten years or so,
6 and he was never rated by the Attorney General. He
7 operates totally independent, which in his position is
8 a very valuable, I think, addition to the confidence
9 that is provided to the Justice Department.

10 Clearly, I don't work for the Justice
11 Department any more. And as I discussed with you
12 previously, some sort of assessment, I believe, of both
13 the President and the Inspector General would be
14 appropriate.

15 I heard Mr. Levi say that there is no way that
16 management should review the Inspector General, and I
17 want to set that very clearly for the record because
18 those are the people who we review. And my concern
19 with a 360 evaluation would be who on that 360 would be
20 doing.

21 Now, I look at my clients primarily as
22 Congress, as the Board of Directors, and as the

1 American taxpayer. Nowhere in that equation is
2 management because management would have -- if I'm
3 doing a good job, then they would have a bad review.
4 So I want to be very clear on that point.

5 And then I did want to clarify that most IGs
6 that I am aware of, and I'm in the community and I go
7 to monthly CIGIE meetings, is what they're called,
8 Council of IGs -- this is not a big issue for a
9 majority of Inspectors General.

10 They are independent. They do have direct
11 communications with certain members of Congress that
12 would say that if they're being impinged in the work of
13 their independent and objective reviews, then there's a
14 mechanism called a seven-day letter to Congress that
15 you would submit and say, well, wait a minute. I'm
16 being prevented from doing the work I need to do,
17 whether it's by budgetary limitations or whether it's
18 by a review process that I'm really worried.

19 Now, a lot of the rationale for having IG
20 reviews went out the door with the IG Reform Act of
21 2008, where there's no bonuses tied to performance for
22 senior executive-level Inspectors General. I'm not in

1 that because I'm not a federal -- I'm not appointed by
2 the Congress. I'm appointed by the Board.

3 So I agree with you, there are some delicate
4 issues to work out. My request to you, when we talked
5 on the phone last week, was that anything that
6 essentially is good for the goose is good for the
7 gander. So whatever comes up with the IG, I believe
8 that the President of the Corporation should be
9 subjected to the same standards.

10 CHAIRMAN MINOW: Thank you, Mr. Inspector
11 General. That makes enormous sense and, as you say, it
12 matches very much what we discussed earlier.

13 And so my proposal to the committee is that we
14 undertake a plan to identify what the steps of an
15 assessment would be, very much keeping in mind that it
16 would be a comparable assessment for the IG and for the
17 President. I agree entirely that it would be
18 inappropriate for this assessment of the IG to be done
19 by the President or by any other employee of Legal
20 Services Corporation.

21 Some form of feedback from various
22 constituencies seems at least relevant. At least,

1 that's one possibility of an input that goes into an
2 assessment -- not that they would be doing the
3 assessment, but that they would be giving some
4 feedback. So that's a possibility.

5 I'm looking for comments or volunteers who
6 would like to be part of a subcommittee to develop the
7 method for assessment that we would then bring to the
8 committee for approval.

9 MS. REISKIN: This is Julie. I'd be happy to
10 help, although I don't know that I have great expertise
11 on this. And I think that in terms of constituencies,
12 because of the unusual role of the AG, any kind of
13 feedback should be very specific, like measurable kinds
14 of -- and I don't know exactly what, but it shouldn't
15 just be open.

16 It should be specific, on a specific
17 competency that would be relevant to the job of the IG,
18 just so that we don't have people using it like as a
19 lobbying thing, like I don't want to be -- I mean, you
20 know what I'm saying, I hope.

21 CHAIRMAN MINOW: Right. Right. No, that
22 makes absolute sense.

1 MR. LEVI: Well, can I just say something,
2 Martha? It's John.

3 CHAIRMAN MINOW: Yes, please.

4 MR. LEVI: I just want to assure Mr. Schanz
5 that the President will be reviews thoroughly, and
6 probably moreso, given the constraints that exist in
7 this. And this is not personal at all to this IG, but
8 I just do have an observation.

9 What would an organization do if an IG had
10 really run amuck? I assume, because of the charge that
11 we have, that we have some responsibility to the public
12 to also assure because after all, your office is also
13 spending taxpayer funds.

14 And so you made a comment a minute ago that
15 I'm not so sure that it's a given that
16 management -- management is not a part of the process
17 of reviewing you. The comment you made I'm not sure
18 was fully accurate. But I know that's sort of how the
19 IG world sees it. But we'll assume that not all
20 managements would necessarily think their IG was doing
21 a bad job if they looked into something that required
22 it.

1 But I think that you and we both want to have
2 the -- we're all in this together. We're looking out
3 for the public. And we understand what the statutory
4 limitations are, I think, and I've read the legal
5 memoranda, which are interesting. And if anybody wants
6 to spend a lot of time delving into a field of law that
7 they may not spend much other time other than being on
8 this board, they can do that.

9 But we'll come to a place that you feel
10 comfortable with and I'm sure that we feel comfortable
11 with. I don't see that becoming a problem.

12 CHAIRMAN MINOW: I'd like to underscore
13 nothing that we're talking about is personal to the
14 Inspector General. And it's because Jeff Schanz has
15 set such a standard of integrity and transparency in
16 all the work that he does that this is the right time
17 for the Board to undertake the development of an
18 appropriate assessment tool.

19 I notice that on the self-evaluation form for
20 the Board of Directors -- and I'm not sure how this
21 happened -- one of the tasks that we have to respond
22 to, we have to show that we've done each year, is that

1 we annually evaluate the Inspector General. So this is
2 apparently a preexisting obligation, and it's one that
3 we will now undertake, just as we annually must
4 evaluate the LSC President.

5 So I undertake, as the chair, with Julie's
6 help, to develop one or two, maybe three possibilities
7 of modes of assessment, and promise to be back to you
8 as a committee. Let's maybe be in touch with each
9 other informally about that before the next committee
10 meeting, and perhaps schedule a telephonic committee
11 meeting before we meet together in person. Does that
12 make sense?

13 MR. LEVI: It does to me.

14 CHAIRMAN MINOW: All right. Then we can move
15 on to our next item.

16 MR. LEVI: Well, now we have an issue relating
17 to the Sunshine Act.

18 MR. SCHANZ: And just for interjection, Dean
19 Minow, thank you very much for your confidence. And
20 yes, you clearly stated what we had talked about. I
21 appreciate that.

22 MR. LEVI: I now think we have to cut

1 off -- because you have dialed in on the closed line --

2 CHAIRMAN MINOW: Yes.

3 MR. LEVI: -- and we have to be concerned
4 about the Sunshine Act, hopefully the open line is now
5 cleared of its issue. Do we have any way of knowing
6 that before we make her dial into it? There's nobody
7 on it? All right.

8 So technically I think we should observe this
9 nicety. I hate to do this to you, Martha, but you've
10 got to redial into the open line.

11 CHAIRMAN MINOW: That's fine. That's fine.
12 I'll do that. Be right back.

13 (Pause)

14 CHAIRMAN MINOW: Thank you. So to review,
15 what we've just agreed to do is have a subcommittee
16 report back to this committee about the particular
17 method for IG evaluation, and to develop one, two, or
18 three different options, and to be in touch
19 telephonically and electronically before we next meet
20 in person.

21 Anybody have additions or comments about that?

22 MR. LEVI: No, and I appreciate your

1 summarizing that on the open line because that's what
2 was discussed in the closed portion there.

3 CHAIRMAN MINOW: Only because of a problem
4 with the telephone. Okay. Great.

5 Then we move to item 6, and this is an item
6 brought to us by Charles Keckler. So Charles, would
7 you like to describe it and explain why it's coming to
8 us?

9 PROFESSOR KECKLER: Thank you, Dean. This is
10 a proposed change to the charter of this committee.
11 I've circulated a copy of the proposed changes, a
12 markup of the current charter and then a third page
13 that indicates the changed proposed added materials.

14 It's the same that I've provided to you
15 electronically, Dean, except for the title of this.
16 The section which is currently titled, "President and
17 Inspector General," I notice that as a technical
18 matter, the heading for the proposed change should be
19 something on the order of, "President, Officers, and
20 Inspector General." So otherwise, that's identical to
21 what I sent electronically.

22 The purpose, primary purpose, of this change

1 in the charter is to align the performance review
2 responsibilities of the committee with the overall
3 Board responsibilities as indicated in the bylaws,
4 which extend to the President, the Inspector General,
5 and certain designated officers of the Corporation are
6 to serve at the discretion of the Board.

7 Currently, although as a matter of the bylaws
8 those officers serve at our discretion, they are not
9 subject to any performance review by the Board or this
10 committee. And so the primary purpose is to align the
11 responsibilities of the committee for performance
12 review so that our discretion, which is articulated in
13 the bylaws, is guided by that performance evaluation.

14 So that's the primary purpose. And I will
15 open it up for questions and discussions. Let me read
16 the language, though, to those that don't have a copy.

17 In the charter, it says in this section, "Subject to
18 review and approval by the Board, the committee shall
19 annually review and report to the Board on the
20 performance and compensation" -- and the change would
21 be "of the President, the Inspector General,
22 and" -- this is the new language -- "those officers of

1 the Corporation so designated under Article 6 of the
2 bylaws of the Corporation."

3 Second sentence: "The committee shall consult
4 with the President regarding reviews of officers of the
5 Corporation other than the President." In light of our
6 previous discussion, I should clarify -- I think it's
7 clear in the language -- but that the Inspector General
8 is not deemed to be an officer of the Corporation, and
9 therefore the review would not be done in consultation
10 with the President.

11 So that's the idea. And I'll open it up to
12 suggestions on the wisdom of this and the language
13 involved.

14 CHAIRMAN MINOW: Great. Thank you. Well
15 presented. Should we go forward with it, maybe it
16 would make sense to clarify that it does not cover the
17 IG, just in case there's any question about that.

18 So I'd be interested in other people's
19 comments about it. It is anomalous to have a Board do
20 the assessment of officers, although it's also unusual
21 to have the Board have the ability to dismiss officers.
22 The normal structure of a nonprofit board has only the

1 hiring and firing of the top executive being a decision
2 for the board, and after that, all personnel decisions
3 are to be made by the executive who reports to the
4 board.

5 When that's what most board governance
6 indicates is the proper allocation of responsibilities,
7 we are living with a bylaw that doesn't present it
8 quite in those forms. And so what are other people's
9 thoughts about this?

10 MR. LEVI: I think we're living with a
11 hangover from the prior Board that has caused this.
12 One question that I have for Charles is: What if it
13 were flipped, and we asked the President, in conducting
14 those reviews of the other officers, to consult us? As
15 opposed to the reverse.

16 CHAIRMAN MINOW: I take it the argument for
17 that, John, is that again, that is what normally the
18 job of the CEO is, is to be the person to whom all
19 other employees ultimately or directly report.

20 As a CEO, I can't imagine having any other
21 relationship to the people for whom I am responsible.
22 Also, just to be utterly frank, as a volunteer Board,

1 we will be spending all of our time in performance
2 reviews, I would fear, if we don't put the primary
3 responsibility for that task in the role of the
4 President.

5 As it is, this committee alone now has two
6 major performance reviews to conduct. And should we
7 now undertake many more, I think that I'll have to quit
8 my day job.

9 MS. BROWNE: This is Sharon Browne. Do you
10 have a copy of Article 6 of the bylaws that you could
11 share with us? I didn't bring my copy with me.

12 PROFESSOR KECKLER: I think Vic has a copy
13 that he can show -- I'm sorry. Vic has a copy here
14 with him. He can show you that.

15 CHAIRMAN MINOW: Of course, another option we
16 have is to change the bylaws. But I'm not suggesting
17 that.

18 PROFESSOR KECKLER: Right. And I think that
19 if the bylaws aren't changed, I just feel very
20 uncomfortable with this being our ultimate
21 responsibility. And I think there may be a reason in
22 the bylaws. I don't know; we can revisit the question

1 of why the bylaws are as they are.

2 They create a certain level of independence in
3 the senior officers of the Corporation by having them
4 serve ultimately at Board discretion, and they create a
5 certain level of authority on the Board that's
6 currently extant.

7 And the purpose of the proposal is my
8 discomfort that this discretion isn't authoritatively
9 guided by a performance assessment that we do. It
10 seems like we're asked in the bylaws to exercise some
11 independent judgment over the officers of the
12 Corporation, and that we need some rational basis to
13 exercise that judgment.

14 CHAIRMAN MINOW: It's a perfectly good point.
15 Does anyone -- maybe, Victor, you could explain to us
16 the history. How did this come to pass?

17 PRESIDENT FORTUNO: Yes. I believe that the
18 provision in the bylaws stems from a provision,
19 corresponding provision, of the Act that officers of
20 the Corporation, the President and other officers, are
21 appointed and removed by the Board of Directors.

22 The bylaws then of course provide greater

1 detail, and the bylaws provide that among the duties of
2 the President are to -- subject to the direction and
3 guidance or policies established by the Board, the
4 President is to supervise the other officers of the
5 Corporation. But that's not necessarily inconsistent
6 with the Board being involved either as the principal
7 or, in conjunction with the President, as the reviewing
8 body.

9 But certainly the President has, under the
10 bylaws, the day-to-day supervision of officers. But
11 it's the Board -- the President can't remove officers.

12 Only the Board, and that's by statute, can appoint or
13 remove officers of the Corporation. And the officers
14 consist of, in addition to the President, of course,
15 it's any Vice President, the Treasurer, and the
16 Corporate Secretary.

17 MR. LEVI: So as an employment lawyer, I would
18 sure hate to see individuals in the board role being
19 primary actors such that their depositions will be
20 taken as it relates to performance reviews. And at
21 least on not-for-profit boards where I've served, it
22 has been for that very reason that it is the

1 responsibility of the CEO to conduct those reviews.

2 But where you have a board treasurer, for
3 example, or head of a finance committee, there would be
4 an expectation that the head would consult with the
5 board person in that role and as a part of, are they
6 getting the stuff done for the meetings on time? How
7 is it working? That kind of input would normally
8 occur.

9 And so that's why I asked the question about
10 flipping it around. And I don't want to be guided by,
11 necessarily, a prior messy experience. And I don't
12 want to rush into this. There's good discussion going
13 on here.

14 But that's how I come out on it. And that's
15 sort of what my experience is.

16 CHAIRMAN MINOW: Well, that's helpful. That's
17 helpful, John. If I can state it in a way that -- you
18 know, often is the case a student restates something so
19 that you find out whether the student knows it or
20 understands it -- Charles has raised a very important
21 point, that if we are responsibility ultimately for the
22 firing of any officer, that we should have the

1 appropriate review and knowledge.

2 On the other hand, the day-to-day task of
3 supervision does fall to the President and, one would
4 hope, some degree of assessment as well.

5 And so John Levi's proposal is that we develop
6 a clarified method of assessment of any officer such
7 that the Board has the direct input and
8 involvement -- and I guess maybe this is my
9 modification -- and the President needs to report to
10 the Board annually on the performance assessment of any
11 officer so that the Board has full and detailed
12 information on an annual basis and could then decide,
13 if need be, whether anybody should be removed.

14 How was that? I'm just trying to avoid a
15 situation where we have to be full-time management,
16 which I think is just bad for the health of a nonprofit
17 organization.

18 MS. REISKIN: This is Julie. That makes a lot
19 of sense to me. And quite honestly, those would be
20 competencies -- that kind of ability to evaluate and
21 then consult with affected parties, including specific
22 board members, would be competencies I would expect in

1 a president.

2 Like, for example, the treasurer, making sure
3 that the reports are ready, that's part of their job.
4 So that just makes a lot more sense to me to have it
5 flipped the way John had proposed.

6 PROFESSOR KECKLER: Dean, with regard to the
7 specific language that I've talked about, one of the
8 alternatives that I considered with regard to the
9 second sentence -- I mean, I tried to think about this
10 in the second sentence.

11 And the current proposed second sentence,
12 which is very much considered in my mind to be a draft,
13 says, "The committee shall consult with the President
14 regarding reviews of officers."

15 Now, I think that what's being suggested here
16 is -- and I'm certainly very open to it myself -- a
17 stronger role for the President in that. One of the
18 alternatives that I considered was something on the
19 order of, the committee shall base its review on the
20 opinion of the President, but not solely on such.

21 I think that that puts it a little stronger.
22 My concern is that if we simply effectively completely

1 delegate to the President, that is, say it's within the
2 committee's jurisdiction, but any reviews we did are
3 based solely on whatever information is received from
4 the President, it seems to me that that might be
5 delegating beyond what the statute and the bylaws seem
6 to suggest our role is.

7 But it seems to me to be fine as long as we
8 don't base it solely on the opinion or a review by the
9 President that that would be fine and that the first
10 instance review should be attached to the chief
11 executive.

12 CHAIRMAN MINOW: I think that's a very
13 judicious way to handle this. And if you don't mind,
14 your amended language sounds to me just completely
15 appropriate.

16 One question I guess I'd have is maybe rather
17 than an opinion, we could even say, "recommendation
18 based on assessment," so that we make clear that we are
19 expecting the President to conduct an assessment of
20 these officers and to make a recommendation, but the
21 Board is responsible.

22 MR. LEVI: Martha, I think Robert wanted to

1 say something.

2 CHAIRMAN MINOW: Okay, Robert.

3 MR. LEVI: You've got to turn your mike on.

4 MR. GREY: Dean, two things. One is, it seems
5 to me that under the Act itself, we have to be very
6 careful that we understand what is expected of us. And
7 I think that that's been articulated.

8 The second is, and I'm trying to be mindful of
9 what happens at the end of the situation that we set up
10 for ourselves, understanding one thing that John said,
11 and that is, people need to be clear about the
12 expectation of employment, and that if we leave
13 something open-ended or too general, we're in
14 litigation whether we like it or not.

15 So it seems to me one of the things we might
16 want to think about is to craft language and to test it
17 against the General Counsel's office or outside
18 counsel, whatever it is, with the idea that there is a
19 clear understanding by the officers who are being
20 evaluated what is going to be -- what is going to
21 happen.

22 I guess another way of saying that is, we

1 could be satisfied with the evaluation by the
2 President, and so conclude. But if not, we should then
3 allow ourselves to do other evaluation. It seems to me
4 it closes the door, if we're satisfied, that there
5 hasn't been other evaluation that somebody could then
6 point to and say, well, I got terminated, but it says
7 the Board could have done -- could have considered
8 other things. But it doesn't say they did or didn't.

9 So it may be that when we think about
10 this -- we're trying to do it by committee, and I think
11 that's pretty hard -- but I'm just offering a
12 suggestion that it ought to be definitive at some point
13 that that person is receiving an evaluation, and that
14 we're okay with the evaluation presented by the
15 President.

16 If we have more to add, then we ought to add
17 it, as opposed to saying it's open-ended and we could
18 add it or we may not add it but you won't know about it
19 until you get fired, or something like that.

20 CHAIRMAN MINOW: I see what you're saying.
21 And so do you think that it's appropriate to say, quite
22 specifically, that any judgment reached by the Board

1 that could lead to the termination should be preceded
2 by sharing information of the Board's assessment with
3 the individual? Is that what you're suggesting?

4 MR. GREY: No. Martha, I'd like to just kind
5 of refer it back to you, as opposed to trying to come
6 up with the language on the phone. But the idea is
7 that we give a definitive statement about the
8 evaluation process so that it actually has some closure
9 to it.

10 And should we decide to open it, we'll be
11 specific about that, so that whoever is being
12 evaluated, that particular officer, will have
13 knowledge. And we will be able to -- that person will
14 be able to point, or the board will be able to point to
15 something, as it should, as a reason for making
16 something additional to the evaluation by the
17 President.

18 PROFESSOR KECKLER: Robert, those are good
19 suggestions, and I think that just thinking back to our
20 previous agenda item about the Inspector General, I
21 mean, it's clear that what we're doing -- we already
22 have that as a responsibility, to prepare something for

1 the Inspector General that's a specific process, a
2 specific, defensible, clear process going forward.

3 And I think what I would anticipate is that
4 the same sort of thing is going to have to be done for
5 the other officers, including the interaction between
6 the President and the Board on that.

7 So I anticipated this would not be the end of
8 the story. The proposal is simply to bring performance
9 review into the jurisdiction of the committee via
10 charter.

11 MR. LEVI: Could I suggest, then, that maybe
12 you and Martha and Robert --

13 MR. GREY: No.

14 MR. LEVI: You're not volunteering? No?
15 Okay. Well, all right. You and Martha, then, could
16 circulate a revision to the draft. And then when
17 you're ready, we will notice up a meeting, circulate it
18 to the committee and we'll have a meeting. Does
19 that --

20 CHAIRMAN MINOW: Absolutely. That sounds
21 right. I'm still not entirely sure, though, that I
22 understand Robert's point because the idea is that the

1 President's assessment may not be the end point, and
2 process that we're spelling out here should make that
3 clear, but also make clear, if it's not the end point,
4 that the individual involved be notified.

5 Am I getting that right?

6 MR. GREY: Actually, what I'm -- it's halfway
7 right. I'm suggesting that in asking for the
8 President's evaluation, that it could be the end point
9 unless we say otherwise. So I'm really trying to
10 provide us with the officer having some certainty about
11 the evaluative process as opposed to leaving it
12 open-ended.

13 CHAIRMAN MINOW: Yes. There's just some
14 tension between that and Charles' desire to make sure
15 that the committee is involved since it ultimately is
16 our responsibility, whether someone stays in the job or
17 is fired.

18 So there's probably some language we can
19 craft. But I think -- Charles, I don't want to speak
20 for you. But Charles is reluctant to have it sound
21 like, presumptively, the President's review is the end,
22 and instead to suggest that the committee always has a

1 role. Is that correct?

2 MR. LEVI: I think that that's not how we're
3 envisioning this working. So Charles, if you want to,
4 you can try to state what the change would be. But
5 otherwise, we can just draft it up and circulate it.

6 PROFESSOR KECKLER: Well, I'm not sure that
7 there's a specific change in the sense that what we
8 want to do, except, is to examine the language to make
9 sure that we are not tied to a specific situation where
10 we have to do an independent inquiry, and/or we're
11 expected to do an independent inquiry.

12 I think the idea is that we need to have the
13 capacity to do that --

14 CHAIRMAN MINOW: All right.

15 PROFESSOR KECKLER: -- and we need to have the
16 capacity to examine other objective performance data or
17 receive comments from the evaluative person or so on.

18 MR. LEVI: Right.

19 PROFESSOR KECKLER: But that we're not to be
20 tied down to that.

21 MR. LEVI: Right.

22 CHAIRMAN MINOW: All right. Then I think

1 we're on the same page.

2 MR. LEVI: We are. And I think you can
3 conceive of some circumstances in which you have to.

4 CHAIRMAN MINOW: Yes. Charles --

5 MR. LEVI: But we can't have the drafting
6 session right here, right now.

7 CHAIRMAN MINOW: No, no. Charles, why don't
8 you and I work together on the amended language? I
9 think that we all now understand the same point. That
10 makes a lot of sense.

11 FATHER PIUS: Just a quick question of
12 procedure. Even if you have final language that's
13 approved by this committee, it still has to go to the
14 full Board for the approval of the charter change?

15 CHAIRMAN MINOW: Absolutely. But before we
16 can do that, we need the language.

17 FATHER PIUS: Right.

18 MR. LEVI: But, you see, unlike prior boards,
19 I'm not afraid of a telephone meeting of the -- I guess
20 I'll leave prior boards out. Going forward, telephones
21 work.

22 CHAIRMAN MINOW: Well, we could ask, does the

1 committee want to see this language before we bring it
2 to the full board?

3 MR. LEVI: I think so.

4 CHAIRMAN MINOW: So then that's what we'll do.

5 All right. Thank you all, and thank you,
6 Charles, for bringing that to the committee. I think
7 that's important.

8 Now, so item 7, consider and act on any other
9 business.

10 (No response.)

11 CHAIRMAN MINOW: All right. Public comment?

12 MR. LEVI: Only if there's music.

13 (Laughter.)

14 CHAIRMAN MINOW: I would entertain a motion to
15 adjourn.

16 M O T I O N

17 MR. LEVI: So move.

18 CHAIRMAN MINOW: Second. All in favor?

19 (A chorus of ayes.)

20 CHAIRMAN MINOW: Great. Thank you.

21 (Whereupon, at 5:06 p.m., the committee was
22 adjourned.) * * * * *