

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE GOVERNANCE AND
PERFORMANCE REVIEW COMMITTEE

OPEN SESSION

Friday, July 30, 2010

3:45 p.m.

Hyatt Regency Milwaukee
333 W. Kilbourn Avenue
Milwaukee, Wisconsin 53203

COMMITTEE MEMBERS PRESENT:

Martha L. Minow, Chairperson
Sharon L. Browne
Charles N.W. Keckler
Thomas R. Meites
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Jonann C. Chiles (by telephone)
Thomas A. Fuentes (by telephone)
Robert J. Grey, Jr.
Victor B. Maddox
Laurie I. Mikva
Hon. Sarah M. Singleton (by telephone)

STAFF AND PUBLIC PRESENT:

Victor M. Fortuno, Interim President and General Counsel
Kathleen Connors, Executive Assistant to the President
Patricia Batie, Acting Corporate Secretary and FOIA Officer, Office of Legal Affairs
Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs
Karen J. Sarjeant, Vice President for Programs and Compliance
David L. Richardson, Treasurer and Comptroller
Charles Jeffress, Chief Administrative Officer
Linda Mullenbach, Senior Assistant General Counsel, 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, Government Relations and Public Affairs Office
Stephen Barr, Media Relations Director, Government Relations and Public Affairs Office
Danilo A. Cardona, Director, Office of Compliance and Enforcement
Kamala Srinavasagam, Program Counsel III, Office of Compliance and Enforcement
Janet LaBella, Director, Office of Program Performance
Bristow Hardin, Program Analyst III, Office of Program Performance
Alice C. Dickerson, Director, Office of Human Resources
Jonathan D. Asher, Executive Director, Colorado Legal Services
Klaus Sitte, Executive Director, Montana Legal Services Association

The Reverend Pius Pietrzyk, O.P., Board Nominee
Harry Korell, LSC Board Nominee
Julie Reiskin, LSC Board Nominee
Gloria Valencia-Weber, LSC Board Nominee

Thomas Smegal, Smegal Law Firm

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

2 (3:45 p.m.)

3 CHAIRMAN MINOW: The Governance and
4 Performance Review Committee, let's call it to order.
5 If you're a member of the committee, please indicate
6 your presence.

7 MS. BROWNE: Sharon Browne.

8 PROFESSOR KECKLER: Charles Keckler.

9 CHAIRMAN MINOW: Is there no other member of
10 the committee here? Martha Minow is here. Then we
11 don't have -- Tom, you're a member of the committee.

12 MR. MEITES: I'm here, if I'm a member.

13 MR. FUENTES: I'm on it.

14 CHAIRMAN MINOW: Excuse me. Who is that on
15 the phone? Tom Fuentes, was that you?

16 MR. FUENTES: Yes. That is me. Perhaps
17 you're not hearing.

18 CHAIRMAN MINOW: No. You're coming in and
19 out. I'm sorry.

20 MR. FUENTES: All right.

21 PROFESSOR KECKLER: Your members, Madam
22 Chairman, are yourself, Sharon Browne, Charles Keckler,

1 and Tom Meites.

2 CHAIRMAN MINOW: We don't have Jonann on the
3 phone, do we?

4 MS. CHILES: Jonann Chiles is on the phone.

5 CHAIRMAN MINOW: Oh, you are? Okay. Good.

6 MS. CHILES: But I'm not a member of the
7 committee.

8 CHAIRMAN MINOW: Right. So I think we're
9 missing John Levi, but I think we're going to go ahead.

10 And I would entertain a motion for approval of
11 the agenda.

12 M O T I O N

13 MS. BROWNE: I'll move.

14 PROFESSOR KECKLER: Second.

15 CHAIRMAN MINOW: Thank you. No one's making
16 any proposals for an amendment, so let's proceed. We
17 don't have a lot of time. I'll just do a brief
18 overview, having approved the agenda, so that we can
19 move as expeditiously as we can.

20 As we indicated during our last meeting, there
21 are two issues about governance. We have two different
22 kinds of responsibilities on this committee. The first

1 is governance, meaning how the board operates, and the
2 second is performance review.

3 So on the governance front, we will have a
4 staff report on the virtual board manual from John
5 Constance. And secondly, as pursuant to our meeting
6 last time when we approved moving ahead on
7 self-evaluation, as you saw in the materials, we have a
8 set of options about how to proceed with
9 self-evaluation of this committee's work. And so John
10 will help us with both of those.

11 I hope that we can reserve the bulk of our
12 time, which is a very short amount of time -- I think
13 at most, we'll have 10, 15 minutes for this -- on
14 discussion of a research agenda, which is an assignment
15 that the chair gave to this committee when issues were
16 raised about the role of LSC in developing and
17 producing research material both for our own
18 self-understanding and also for advocacy on the Hill.
19 So we'll spend, I hope, 15 minutes; maybe it'll be only
20 10.

21 We also were asked by the chair to be the
22 place where the OLA report was discussed. And so I

1 hope we have some time for that.

2 And then, if there's any time, we'll talk
3 about new items for the agenda.

4 So John Constance, would you give us a report
5 on the virtual board manual?

6 MR. CONSTANCE: Thank you, Madam Chairman.
7 For the record, John Constance, director of government
8 relations and public affairs.

9 JUDGE SINGLETON: He needs to sit closer to
10 the microphone. We can't hear him at all?

11 MR. CONSTANCE: Is this mike on? Yes, this
12 mike --

13 CHAIRMAN MINOW: And John, I'm going to
14 interrupt you because --

15 JUDGE SINGLETON: That's better.

16 CHAIRMAN MINOW: -- Sharon has rightly pointed
17 out I skipped the approval of the minutes. So if
18 there's anyone who would like to make a motion about
19 the approval of the minutes.

20 M O T I O N

21 PROFESSOR KECKLER: I'd move to approve the
22 minutes.

1 CHAIRMAN MINOW: Thank you.

2 MS. BROWNE: I'll second.

3 CHAIRMAN MINOW: Thank you. All in favor?

4 (A chorus of ayes.)

5 CHAIRMAN MINOW: Okay. Sorry, John. Please
6 proceed.

7 MR. CONSTANCE: Not a problem. Let me -- I
8 can be very, very brief in terms of the LSC board
9 governance manual issue. As directed by this committee
10 at the last meeting, we have gone ahead and developed a
11 wiki for the consolidation of everything having to do
12 with this board and guide governance, including LSC
13 bylaws, the committee charters, committee membership
14 lists, board resolutions related to the board
15 governance, minutes from recent board meetings, board
16 evaluation procedures, the code of ethics and conduct,
17 travel arrangements and some of the administrative
18 detail regarding that, and several other policy matters
19 that have been part of board resolutions as well.

20 We will have this posted as a draft this week.

21 I will give everyone basically sign-on information so
22 that they can have it. I have a draft table of

1 contents here, and we will take whatever input the
2 board has for improvements to that and move forward.

3 As in any other kind of wiki, I mean, though,
4 this is not private tel. It is password protected so
5 that it's essentially for your use. And it now joins
6 with the board orientation wiki that we had previously
7 created as kind of a two-part package for the use of
8 the board.

9 CHAIRMAN MINOW: Thank you, John. So just
10 three questions about it.

11 One, will this then become part of the
12 orientation, board orientation, process, to use this?

13 MR. CONSTANCE: It will. It will.

14 CHAIRMAN MINOW: And secondly, will this be
15 searchable? Is it a word-searchable kind of document
16 or other --

17 MR. CONSTANCE: Let me check on that. I
18 presume that it is, but I would need to check. I mean,
19 it has a very descriptive table of contents, and each
20 individual part is probably also searchable.

21 CHAIRMAN MINOW: Right. And then finally, is
22 it going to be in a kind of PDF form, or is it

1 something that is adjusted? So when you say "wiki,"
2 that usually implies that people can amend it and edit
3 it online. But something that's a manual typically is
4 not something that should be amended; it's something
5 that should be in a fixed form.

6 MR. CONSTANCE: Right. Let me check on that
7 detail as well. I was assuming that it was not going
8 to be, in its current form, the type of wiki we have.
9 I'm assuming that it can't be changed, but I'll check
10 on that as well.

11 CHAIRMAN MINOW: Thank you. Are there any
12 questions or comments anyone else has? Sharon?

13 MS. BROWNE: I know that we have access to
14 wiki currently, and I don't know if anybody else has
15 had any problems with it. But I wasn't able to log on.
16 I don't know if it was the security level on my
17 computer --

18 MR. CONSTANCE: Let me know. Why don't you
19 just e-mail me, and we'll basically see that you do get
20 on. I don't know that others have had that problem.
21 But basically, we've provided to the board name and
22 password information, and --

1 CHAIRMAN MINOW: Well, actually, this is such
2 a good point, Sharon. So when you, John, send this
3 around, I would ask -- and I'll try to remember to send
4 an e-mail about this -- everybody on the committee to
5 check, can you get into it --

6 MR. CONSTANCE: Right.

7 CHAIRMAN MINOW: -- and tell us one way or the
8 other that yes, I can or no, I can't, so that we have
9 some confirmation about that.

10 MR. CONSTANCE: That's fine. That's great.
11 Happy to help.

12 CHAIRMAN MINOW: Any other questions or
13 comments about the virtual board manual?

14 (No response.)

15 CHAIRMAN MINOW: No? Than let's go on to
16 committee self-evaluation forms. And thank you, John,
17 very much for following up. As members may recall, at
18 the last committee meeting we resolved to establish a
19 protocol for board committee self-evaluation.

20 I asked John to come up with some examples of
21 options, and you have before you in the materials three
22 examples. John, if you have a comment on them?

1 MR. CONSTANCE: Nothing other than the fact
2 that gross plagiarism is clearly involved in what you
3 have in front of you at this moment, and I plead guilty
4 to that. What I did do is basically checked a variety
5 of sources -- written sources, some internet
6 sources -- just to figure out what the options are.

7 And I think what you have before you are the
8 three most typical examples out there that
9 organizations, nonprofit organizations, are right now
10 using for purposes of committee self-evaluation, the
11 first one being an in-depth review. The principal
12 portion of that bringing folks in from outside,
13 basically doing even interviews and a real, full look
14 at the work of the committee.

15 The one example that's provided here has to do
16 with an audit committee example. Again, these can be
17 tailored, I know, for each of the content areas. But
18 this is really the full treatment.

19 The second one is a self-evaluation kind of an
20 instrument, a form to fill out. This seems like the
21 most generally used example amongst the nonprofits that
22 I could go in and look at and find. And again, this is

1 only a sample. We would do one and we would tailor one
2 for committees of this board.

3 And the last one that I did include is more of
4 a -- it's the one unique one that I found that the
5 American Red Cross Board of Governors uses. And they
6 have a board committee protocol that lays out what the
7 responsibility should be of all board chairs, all board
8 members, and then requires their board to simply take
9 their charter every year, as well as any other metrics
10 that they feel they should look at -- for example, the
11 goals that they might possibly have established for
12 themselves the previous year -- and just do an
13 evaluation of that. And I think the result of that is
14 usually wrapped up in a memo to their governance
15 committee and then to the full board.

16 So those are kind of the three models that I
17 was able to find for you.

18 CHAIRMAN MINOW: Thank you, John. And I think
19 that well structures the choices before us. And so
20 I'll say a comment or two about these, but then invite
21 the committee members to discuss it. And I would hope,
22 within the short space of time, we'll decide which kind

1 we want, and then we'll get to work in devising the
2 instrument that's appropriate for us.

3 So let's be clear that this is trying to come
4 up with an evaluation tool that would be useful for
5 each of our committees. We could, of course, come up
6 with the option of letting each committee come up with
7 its own, but I think it's really our job to come up
8 with a recommended form.

9 And we could allow each of the committees to
10 adjust the questions if there are some special
11 questions, for example, with regard to the audit or
12 finance committee that might be different than for
13 others. But again, I think we should aim to have one
14 tool that's used for all of the committees.

15 My own sense is that the very first example,
16 the very in-depth one, is intriguing but not
17 necessarily the most appropriate one for us. And some
18 combination of the second and the third seem right to
19 me, that is, that the form that we could try to produce
20 would be one that is a multiple-choice question but
21 that is keyed to the roles and responsibilities and
22 goals that we articulate, both as the entire

1 Corporation and then for each committee.

2 That's what I would suggest. But let me hear
3 what other people would suggest.

4 PROFESSOR KECKLER: I would agree with that
5 assessment. And I think that looking to develop a
6 general form that's suitable for all the committees, in
7 terms of formulating the questions, the questions that
8 are on there, the questions that are rated, certainly,
9 I think, appropriate questions that would be added to
10 this self-evaluation form would be based on the
11 charters of the committee.

12 How well are we filling each of the main
13 components of the charter? Perhaps listing those
14 components. That's how the instruments might differ
15 for a committee --

16 CHAIRMAN MINOW: Right. Right.

17 PROFESSOR KECKLER: -- would be based on the
18 differences in the charter. That's sort of the general
19 impression that I got that might be something that
20 would be useful and doable.

21 CHAIRMAN MINOW: Great.

22 Sharon?

1 MS. BROWNE: Well, I agree with both Charles
2 and Martha. I like the combination of the second and
3 the third samples that we got here. I thought the
4 third sample, from the American Red Cross, is
5 particularly good because it does start with the roles
6 and responsibilities of the specific committees. And I
7 think that will be nice to be able to target each
8 committee based upon their roles and responsibilities,
9 and then how well that they're functioning within their
10 charters.

11 I think combining it with that second one,
12 evaluation tool, it's kind of nice to have just really
13 quick questions that are answered based upon you
14 strongly agree to I disagree entirely. And that can
15 kind of give an overall flavor to the different
16 evaluations. And so I think a combination of the two.

17 And the question-and-answer portion of No. 2
18 can almost be done for each committee, so that we can
19 see how the committees are performing to
20 each -- compared to the other ones. Sometimes you
21 might have a stronger committee versus one that's
22 weaker, and maybe there needs to be some tweaking of

1 those different committees.

2 And so I can see the question-and-answer -- or
3 the questions on No. 2 being kind of generic for
4 everybody, but No. 3 being tailored to each committee
5 and their charters.

6 CHAIRMAN MINOW: Well, this sounds like
7 there's a nice consensus. And so I think that's the
8 direction that we'll go to. And I would propose that
9 we would bring to the next committee, but will
10 circulate well in advance, the draft, a draft version
11 that will be designed as a generic for every committee,
12 but integrate this attention to the charter of each
13 committee, and put it in a form that is both easy to be
14 done but also allows for some depth. That's the
15 charge.

16 Tom?

17 MR. MEITES: In the past, we have used
18 evaluation forms that have numerical grades.

19 CHAIRMAN MINOW: Yes.

20 MR. MEITES: Let me ask John if he found that
21 helpful, and whether that would be something you would
22 consider adding to this.

1 MR. CONSTANCE: You know, if you want to do a
2 comparative look, committee to committee, that all
3 was -- or year to year, that is always the kind of
4 thing that is helpful. And we could look at that in
5 terms of something that would do what you had
6 mentioned, Sharon, and that is you like the strongly
7 agree to -- but also give a numeric value to those so
8 that you do have something that you can look at year to
9 year that would be quantitative, that would just give
10 you at least some idea of that.

11 CHAIRMAN MINOW: That sounds promising. And
12 if you assign numerical values to agree, strongly
13 agree, it will be easy to do that. I think that it's
14 sort of present in the version we have here that we're
15 calling No. 2, to have something that's like a bottom
16 line. How do you evaluate, as a whole, your own
17 performance and the committee's performance? Those two
18 measures, I think, are the typically good ones to have.

19 So I think that we are done with this
20 particular item, unless I hear any further issues or
21 questions?

22 MR. CONSTANCE: Madam Chairman?

1 CHAIRMAN MINOW: Yes?

2 MR. CONSTANCE: One thing that I might add or
3 recommend, that we'd be more than happy to do the staff
4 work to accomplish this, and that is in the interim
5 between now and your next board meeting, turn something
6 around that the committee could look at so that at the
7 next board meeting, something could be approved and
8 then administered at the end of the year --

9 CHAIRMAN MINOW: That's perfect.

10 MR. CONSTANCE: -- so we don't have to go
11 beyond that. I want to recommend to everyone's memory,
12 too, is a recommendation from GAO. This is one of the
13 famous six right now. So we've gotten the other parts
14 of board self-evaluation and board individual member
15 self-evaluation done. This was the last in that
16 triumvirate.

17 So if we can get that done by the end of the
18 calendar year, that would be helpful. And I'd be happy
19 to do the staff work to try to accomplish that.

20 CHAIRMAN MINOW: Well, thank you, John. I
21 think that's perfect. And I want to thank you not only
22 for that, but for your staff help to get us to this

1 point. I think that's excellent.

2 Then we'll turn to the next item, which is the
3 topic of research agenda, goals, methods, and areas of
4 concentration which the chair asked this committee to
5 attend to. And again, I want to thank John and also
6 Victor, who helped, and Karen. And in particular,
7 John -- is it Meyer or Meyer?

8 MR. CONSTANCE: Meyer.

9 CHAIRMAN MINOW: -- Meyer, and Bristow Hardin
10 and Steve Barr, who --

11 MR. CONSTANCE: This is the one handout that
12 everyone missed from the --

13 CHAIRMAN MINOW: Thank you. Oh, good. Thank
14 you -- for producing materials that will help us have
15 this discussion. And again, I will try to frame it a
16 little bit, and hope that we can have an open and clear
17 discussion with the goal of concluding with some next
18 steps.

19 So as you may recall, it came up at an earlier
20 board meeting -- Chair Levi suggested that there are
21 research needs that the LSC has. And it's not clear
22 where the work is being undertaken, and therefore

1 charged this committee to look at both what we
2 currently do and what we might need.

3 As I identify it, there are three areas of
4 general research needs. One is in the area that deals
5 with the need, making the case for the need. "What is
6 the justice gap?" is an example of the work that we've
7 done in the past, and in general, should we continue to
8 do work in that area?

9 A footnote: The Justice Gap report is much
10 criticized in its methodology for being superficial.
11 And footnote 2: The Department of Justice now has a
12 sub-unit devoted to the issue of access to justice, and
13 I have met with the head of that office, who is asking
14 us for information and asking us to be the research
15 source.

16 MR. MEITES: Who's the head?

17 CHAIRMAN MINOW: That's Larry Tribe, Lawrence
18 Tribe, erstwhile my colleague, another one who's
19 departed for Washington. So there's a set of
20 questions. That's one audience. Obviously, the
21 Congress directly is another audience. We hear it also
22 from our grantees as another audience. There is no

1 shortage of demand for that information. Is this an
2 area we should undertake to do more sophisticated work
3 or to commission work, and if so, to do it with what
4 questions?

5 I have already reached out to the American Bar
6 Foundation, which is a regular process of trying to
7 document the unmet legal needs of the country, and
8 asked whether they would be willing to be a partner in
9 this area. They are eager to be a partner. They also
10 don't have resources.

11 I asked the Department of Justice, do you have
12 resources? They might have resources to pay for it.
13 They don't have the capacity to do the research. So
14 that's just category one.

15 Category two is performance review in terms of
16 quality. Now, this overlaps, obviously, with our own
17 internal performance review work, both inside of LSC
18 and also the IG's work. There's a question about
19 whether there's value to be added here in terms of
20 quality. Do we have enough data and information on
21 quality?

22 In the roundtable we just had, we heard, I

1 think, one of the questions that's really come up
2 often: Are we collecting the data that allow us to
3 give answers about the quality of the work that's
4 delivered? And I don't think the answer is yes. I
5 think that there's a misalignment between the data that
6 we ask grantees to supply and the answers that we want
7 to be able to give in Congress. And so that's a second
8 area.

9 The third area that I would identify is
10 efficiency in the use of the resources, bang for the
11 buck, which is different than quality. And here the
12 issue may actually require more innovation in
13 thinking -- thinking about what are the metrics by
14 which we can measure efficiency or measure innovation.

15 And to some extent Robert Grey was getting at
16 it earlier. Are there thinking out of the box modes?
17 Are there best practices? And it's best practices not
18 just in the quality of services or not just in the
19 management of fiscal resources but in, if you will, the
20 deployment of the resources to produce the quality.

21 That's the third area that I would identify.

22 And I would like first to start the discussion by

1 asking, what do you think about that triumvirate, if
2 you will? An if there are other areas where you think
3 it is important that we should be doing, please suggest
4 that now.

5 MR. MEITES: Martha?

6 CHAIRMAN MINOW: Yes, Tom?

7 MR. MEITES: The first one, I think there is a
8 lot of data. How good it is is for others to talk
9 about. And it would be great if the Department of
10 Justice came up with a couple million bucks to improve
11 the data.

12 Your second one is really troubling. It's
13 very hard --

14 CHAIRMAN MINOW: Absolutely. Absolutely.

15 MR. MEITES: -- to assess attorney
16 performance. And it seems to me that we have one
17 advantage. We have 140 grantees. And I just know that
18 some are better than others because that's the way
19 things are.

20 And I think if we sat down and try to figure
21 out why we think some are better than others, not on an
22 attorney-by-attorney basis but on a kind of --

1 CHAIRMAN MINOW: As an office?

2 MR. MEITES: -- as an organizational basis,
3 and maybe get some of your chums from business school
4 who actually understand things like this --

5 CHAIRMAN MINOW: Sure.

6 MR. MEITES: -- we may be able to come up with
7 some efficiency measures that are organizational rather
8 than service-based.

9 CHAIRMAN MINOW: Yes. Very, very interesting.

10 Other comments? Sharon?

11 MS. BROWNE: On the needs aspect of the
12 research or to update and improve on the Justice Gap
13 report, I think everybody has been asked questions
14 based upon the Justice Gap report. I mean, it's such a
15 nice little report, and it has facts in there that you
16 can quote to, and you can use that to go out and get
17 additional funding. The Senators like it because they
18 have the facts at their fingertip.

19 But I think the methodology of the Justice Gap
20 report was clearly not at the quality that we would
21 expect. But it does have, I felt, a certain simplicity
22 to it that made it very, very useful.

1 If we could find somebody who could develop
2 the methodology and could then, with the
3 information -- it seems like there's so much
4 information out there -- but it all together, that
5 would be worthwhile. But I also think it's also very
6 costly.

7 And so unless we can find the money --

8 CHAIRMAN MINOW: External funds.

9 MS. BROWNE: -- external funds to support that
10 type of a report, I'm not too sure that's where I would
11 want to put my biggest bang for the buck.

12 But I do think the quality of work of
13 attorneys is also a concern. But it is not
14 quantifiable, at least with what we've identified to
15 date. And maybe we need another task force or some
16 people put together to identify the different criteria
17 to even look at how we're going to evaluate attorneys.

18 And your third one is, again, efficiency.
19 Well, all three deserve to be studied. But again, it's
20 how do we prioritize and what's the one that we should
21 focus on first?

22 PROFESSOR KECKLER: Well, I think the -- this

1 doesn't really resolve that exactly. But I think the
2 second and third issues -- and really, the first
3 one -- they're linked into the idea of effective
4 programs. An effective program is one that can, you
5 know, without wasting money, deliver quality services
6 that are directed to do the best possible meeting of
7 the need in its local area.

8 And I think the idea is to do what Tom is
9 saying, in some ways, and find the characteristics of
10 effective programs, and to go beyond the idea that we
11 know that some are more effective than others. We know
12 in some respects, after a while, probably, you're going
13 to be able to tell this looks like an effective
14 program. This looks like these people know what
15 they're doing.

16 But to be able to drill down into that to find
17 those characteristics that are potentially replicable
18 of our most effective grantees, and discover those
19 things and put them together, consolidate and
20 synthesize that wisdom, seems to me to be something
21 that is certainly worthwhile doing.

22 And I think it is doable in the sense that

1 somebody could be sent out, once we really think what
2 are the ten most effective programs -- or we're
3 guessing; they're ten of the twenty best ones. We know
4 these ones are effective, and to send somebody out
5 there and try to find their commonalities, that would
6 certainly be something that would be useful to me and
7 help my understanding.

8 CHAIRMAN MINOW: So I'm actually hearing three
9 maybe next steps. See if this is correct.

10 One is to charge -- and I guess it's charge
11 me -- to explore further, whether it's with the
12 American Bar Foundation or the Department of Justice or
13 some combination thereof, of how to put together a team
14 that would deal with the question posed of need, where
15 the data probably exist but they haven't been
16 adequately analyzed and the methodology could be
17 improved upon. But it may not be where we should spend
18 money of our own. But maybe we can help people.

19 The second is on this more global perspective
20 that Charles just described, how to integrate the
21 expenditures and measures of quality and efficiency in
22 meeting the need. There, frankly, there aren't good

1 data. There aren't good research protocols about it.

2 There's a book that's forthcoming, and I've
3 had the opportunity to read a chapter of it, by a
4 former director of legal services for elderly that
5 claims to do some analysis. And it begins by saying,
6 there's no good data. There's no good measures. This
7 is a major problem recognized in the field.

8 And it's very much for the reasons that Sharon
9 has said. People don't know how to measure in some
10 quantifiable way what is attorney quality. But a next
11 step here might be growing from Tom's suggestion to
12 start somewhat more inductively with the identification
13 of what are widely viewed by peer review to be
14 excellent programs, and to document what makes them
15 excellent; to ask at the systems level, at the firm
16 level, what are practices there that are associated
17 with their excellence and might be replicable.

18 So it's not to try to do an across-the-board
19 evaluation of every delivery of legal services
20 everywhere in the world, but instead to see, are there
21 some markers of quality, and if we're going to be
22 ambitious, quality and efficiency, that might just be

1 lessons learned, best practices. So that's a second
2 step. And I guess I'm nominating myself to pursue that
3 one as well. Thanks, John.

4 MR. CONSTANCE: You're welcome.

5 CHAIRMAN MINOW: So yes, that's the second
6 step.

7 There's a third step which I'd ask you whether
8 it should be done. And it would not be me because it
9 would involve staff much more. And that is to assess
10 whether the information that we currently ask grantees
11 to supply is the proper information. Are we getting
12 the information that would allow the kinds of analyses
13 that we or others may want to do?

14 And this is something that might be as
15 technical as whether as ask questions at the level of
16 detail that we should. For example, how much do you
17 use fill-in-the-blank forms as opposed to
18 computer-generated forms, when we have evidence that
19 fill-in-the-blank forms take much more time and are
20 much more difficult to -- so it's a level of
21 specificity. We don't ask that. Should we be asking
22 that?

1 Another kind of thing that we don't ask or we
2 don't come up with an easy way to calculate is the
3 per-attorney results. So per-attorney, what are the
4 number of cases taken? Per-attorney, what are the
5 numbers of appeals? So the data can be collected and
6 reported in forms that are much more easy to be
7 analyzed than we currently do.

8 So again, this is a question, I don't think,
9 for our committee, but it may be a question to put to
10 staff about are we collecting the right information and
11 information in the right form so that it lends itself
12 more easily to data analysis.

13 So is this something that the committee thinks
14 we should pursue or not pursue? I am not nominating
15 myself to do that.

16 MS. BROWNE: Just a question or a comment on
17 the second one dealing with the peer review, basically
18 is what it amounts to. We already have that
19 information, I would think, and so it's not a matter of
20 going back out into the field and asking it.

21 CHAIRMAN MINOW: No.

22 MS. BROWNE: It's a matter of just

1 reviewing --

2 CHAIRMAN MINOW: Analyzing.

3 MS. BROWNE: -- the different reports that
4 we're received and then seeing if there's a common
5 denominator within each of those, the peer reviews that
6 we could start focusing on.

7 So I just wanted to make sure that that's what
8 your concept was of the second one.

9 CHAIRMAN MINOW: Sure. Absolutely.
10 Absolutely. Not doing new research, but actually
11 analyzing the research that we've done. Right.

12 PROFESSOR KECKLER: Well, I mean, adding onto
13 that, the idea -- I don't know whether this is the
14 second step or the third step -- after you're
15 identifying that initial sort of peer selection of
16 entities to then look at, I mean, I think that the most
17 useful thing would then be for someone independent who
18 is commissioned to go and to visit those things -- I
19 think in this case, when they've been preselected for
20 being excellent, they probably wouldn't mind a visit
21 from researchers --

22 (Laughter.)

1 PROFESSOR KECKLER: -- independent
2 researchers, who can go in there. And of course, those
3 people would have to be paid, so that's an issue.

4 CHAIRMAN MINOW: Sure.

5 PROFESSOR KECKLER: But I think that that -- I
6 don't know whether you're incorporating it as part of
7 the second set. But that's what you would follow up
8 with it.

9 CHAIRMAN MINOW: You're right.

10 PROFESSOR KECKLER: And I think that that, by
11 getting somebody independent, even though we've kind of
12 preselected them and we're not claiming to do more than
13 preselect our best individuals, that would improve the
14 credibility of the study, I think, to outside
15 audiences.

16 CHAIRMAN MINOW: You're right, and that's very
17 helpful. I guess I was agreeing with Sharon. It's not
18 start from scratch to figure out what are that set of
19 excellent offices. And not to claim these are the most
20 excellent, but we have pretty good reason to believe
21 these are excellent.

22 And then, yes, there would be extra research

1 that would be required to figure out what are the
2 elements and are they replicable? Are they lessons
3 that can be extended to others? And there would be a
4 cost involved in that, unless I can get some doctoral
5 students to do it for free.

6 So if there's an agreement that these first
7 two steps are worth doing, that is, to explore whether
8 there's some external funding and research capacity to
9 address the need question, I should look into that and
10 come back and report on that; and then, secondly, to
11 take this peer review-plus approach to excellence and
12 see if we can make some progress on that.

13 And on the third that I've suggested to talk
14 to staff about assessing what data we collect and don't
15 collect, no one is even interested in talking about
16 that, so --

17 PROFESSOR KECKLER: Well, I think that's
18 something that certainly should be done. I know in the
19 next committee I've asked somebody on the agenda to
20 talk about the use of service hours as opposed to
21 simply case service reports and other material.

22 CHAIRMAN MINOW: I see.

1 PROFESSOR KECKLER: Since that material is
2 available to grantees -- they do keep time and do keep
3 hours -- I want to talk a little bit about the use of
4 that data. But that's just --

5 CHAIRMAN MINOW: One example.

6 PROFESSOR KECKLER: -- one example of types of
7 data. And certainly, if other people have other ideas
8 about that, I think that's appropriate either in this
9 committee or in others.

10 CHAIRMAN MINOW: SO how about this. How about
11 we take this question of are we collecting the right
12 data from grantees and are we collecting it in the
13 right form, keep it alive, keep it alive as we see what
14 goes on in other committees and also in consultation
15 with staff.

16 It may well be that if we do, as I hope, make
17 progress on the other kinds of research that I'm
18 proposing to identify, we will hear back from
19 researchers -- it would be so great if only you'd
20 collect the following, or it's in the wrong form. I've
21 already gotten some pieces of that from the American
22 Bar Foundation researchers, who are not happy with the

1 data that we currently have.

2 MR. MEITES: Martha, as you'll see when we get
3 to my committee, Charles has asked and the staff has
4 assembled a compendium of the kind of data that is
5 routinely compiled. There's a lot.

6 I will tell you from experience that ops and
7 regs is the wrong committee to take a big picture view
8 of anything, and so I suggest that your committee take
9 over that data and do what you can with it.

10 CHAIRMAN MINOW: Well, then I look forward to
11 hearing what happens in your committee. And let's
12 again keep this topic open and we'll revisit it at our
13 next committee meeting and maybe have discussions in
14 between.

15 Any further thoughts on this research task?

16 [No response.]

17 CHAIRMAN MINOW: I'm trying to move along as
18 quickly as I can, Mr. Chair.

19 And our next topic is any discussion coming
20 out of the OIG OLA report, which is something that the
21 chair asked this committee to house, even though I'm
22 not sure why. But here we are.

1 So as I understand it, this is a report that
2 emerged from concerns about past practices in the legal
3 advice office. If I'm reading the report correctly,
4 the concerns are remedied or made moot by the
5 withdrawal of the practices that were offending. And
6 Victor is nodding at me. Is that correct?

7 PRESIDENT FORTUNO: I think the report was in
8 response to specific questions from several members of
9 Congress. But I do think that the issues that they
10 raise have been addressed, so I think that it's largely
11 moot.

12 CHAIRMAN MINOW: I see we're joined by Jeff.
13 Do you want to say something about it?

14 MR. SCHANZ: I think the report, as with most
15 work that I do, stands on its own. It's based on a
16 factual representation of what we have ascertained by,
17 in this case, massive interviews of the OLA staff.

18 We also outreached to the LSC management staff
19 that formed the executive team. We did not go back and
20 talk to Ms. Barnett because she had left the
21 Corporation. But we did send out, for lack of a better
22 term, interrogatories or at least requests for

1 information from Charles, Karen, Victor, and John
2 Constance to see what their recollections of it was.

3 This came from a letter from Senator Grassley
4 June 17th of last year, and it was in response to
5 something that Victor sent to Grassley's staff. He had
6 a whole host of questions, which he's prone to do. And
7 if you would indulge me, I would just like to tell you
8 what the Corporation responded to Senator Grassley and
9 three others. The response:

10 "The Corporation's executive team does review
11 and interact with counsel, including the Corporation's
12 in-house counsel, on legal opinions. However, this is
13 not a new or novel practice, and given that those
14 opinions relate to programs and oversight, it makes
15 perfectly good sense to approach them in this
16 collaborative manner.

17 "The discussions help to focus the analysis,
18 and the resulting product is improved by interaction
19 with the programmatic side of the Corporation. Counsel
20 is not only free to reject the feedback of the
21 executive team, but expected to exercise independent
22 judgment and offer his or her best advice on legal

1 issues."

2 That was the response back to Senator
3 Grassley. That seemingly did not satisfy him, and he
4 came back and asked another series of questions on
5 October 26th. He asked me to validate that. So that
6 was the result of our "OLA" review, and like I said, we
7 engaged as many people we could, not going back to the
8 former president to get information on that. And I
9 would direct your attention -- I think you've all seen
10 the report; I know I've sent it to the board. And
11 that's where we stand.

12 I echo what Mr. Fortuno has said, that I
13 believe the practices have changed. And I'll get on my
14 soapbox in the interest of time here. But instead of
15 being personality-driven and person-driven, if you have
16 a good system of internal controls and good policies
17 that you follow no matter what the situation, then you
18 won't get into so much of the he said/she said
19 discussions that Senator Grassley seems fond of asking
20 me to do.

21 CHAIRMAN MINOW: Well, thank you. Although
22 this particular issue is moot, as a new board member I

1 have two questions, and I'm not sure to whom it's
2 appropriate to ask.

3 One question is: In conducting a report of
4 this nature, is there a process of sharing the draft
5 with the people who were interviewed or the people who
6 were asked questions but didn't give answers? What is
7 the process in which a report like this is constructed?
8 Is everyone who's a relevant party consulted?

9 Let's put aside in this instance the former
10 president, who's no longer on the premises. I just
11 would like to understand, is there a process of
12 conferring with everything relevant, and is there a
13 process of sharing a draft? I just don't know how this
14 happens.

15 MR. SCHANZ: In this case, no, because this
16 was more of an investigation request by a Senator.

17 CHAIRMAN MINOW: I see.

18 MR. SCHANZ: In an audit situation, yes,
19 because we abide by the government auditing standards,
20 as promulgated by the Comptroller General. That does
21 require -- and you'll see that in some of our audit
22 reports -- it requires a 30-day turnaround for seeking

1 the views of management officials.

2 So in a case we have coming, we have a draft
3 report that will be given to management for 30 days to
4 provide their opinions. They may have a better
5 recommendation than we have come up with. So that's
6 part of the back-and-forth with audit, which is a
7 public document.

8 The issues of congressional request, or even
9 board request -- and I've conducted a few of those
10 inquiries -- I call those, and it may be a difference
11 without a distinction, but I call those administrative
12 inquiries. They're a little bit stickier because we're
13 dealing with current staff, but we still are trying to
14 get answers for the Hill.

15 They're our funding source. So every time I
16 give them a report that is based on facts, and it
17 referenced independently within my office to make sure
18 we make no misstatements, I think that bodes well for
19 the future funding of the Corporation, quite frankly.

20 CHAIRMAN MINOW: I understand, and I fully
21 respect and admire the work that you're doing here.
22 Again, I'm still just trying to understand the process.

1 And it's, I guess, helpful to have the carcass of a
2 moot report on which to have the discussion about
3 process because nothing turns on this.

4 And it's only to ask, in ascertaining facts
5 about how particular practices occurred, if people
6 involved in the discussions in which those practices
7 occurred are not themselves given the chance to see how
8 they're reported, how do we know that these are the
9 facts as opposed to one person's point of view,
10 particularly when you're dealing with an area where
11 there has been argument and question?

12 So it's just a process question about how you
13 produce a document that is reliable and has veracity if
14 people who were involved in the discussions do not
15 themselves have a chance to look at the report? It's
16 just a question.

17 MR. SCHANZ: Well, we corroborate the
18 information we have with other sources. In this case,
19 we interviewed the entire OLA staff, so it's not one
20 person's opinion. It was a consensus opinion that this
21 was the situation as it existed prior to January 1st.

22 CHAIRMAN MINOW: So then my second

1 question -- that's about my first question, and we're
2 all going to be learning about these different forms of
3 investigation and reporting -- second question actually
4 is specifically about the Office of Legal Advising
5 (sic). I may have a failure to understand the role of
6 the lawyers in this office, especially since
7 everybody's a lawyer or so many people are lawyers.

8 But the general counsel of an entity normally,
9 in every place that I've ever encountered it, has an
10 ongoing discussion with the executive management team
11 or the CEO about what is the question? Can we do this?
12 What are the parameters?

13 And sometimes, when there's an answer from the
14 lawyers that say, no, you can't do it, that's the
15 opening round of a discussion. That's not the end of
16 the discussion, and especially when it's your inside
17 counsel. Normally, the job of the inside counsel is to
18 help you do something, not to be a roadblock.

19 And unless I'm misunderstanding it, putting
20 aside what might have been some larger or separate
21 issues of management style and information control at
22 issue here, I just want to understand whether or not

1 this report has any residue or long-lasting consequence
2 for the relationship between legal advising and the
3 work of the Legal Services Corporation.

4 Because there were some things in this report
5 that baffled me, frankly, about whether it's
6 appropriate or inappropriate for there to be ongoing
7 discussions with lawyers about what are the parameters
8 of an organization. Or is that somehow a violation of
9 the lawyer's independence to actually have a discussion
10 with the CEO?

11 Again, I would find that shocking, given the
12 way that I've seen every other organization deal with
13 in-house counsel.

14 PRESIDENT FORTUNO: No. I don't think that
15 LSC's in-house counsel is any different from anywhere
16 else, I would expect. I think the statement that the
17 inspector general read at the outset about
18 collaboration and exchange of information, not just
19 with management but those with information and
20 responsibilities that would be relevant to the issue at
21 hand, all that kind of collaboration is desirable and,
22 in fact, typical, so that I don't -- counsel is not

1 independent from the standpoint of, if asked a
2 question, answering a question.

3 The advice is only that, only advice. And I
4 think you're correct. I completely agree that
5 counsel's role is to help clarify the issue and help
6 find solutions.

7 MR. MEITES: Martha, there's one complication
8 here, that the general counsel is also the attorney for
9 the board. And those roles can conflict. And I think,
10 although it wasn't clear in the report, that is a theme
11 that is understand the surface.

12 CHAIRMAN MINOW: I see. That's an important
13 point. I didn't pick that up, so that's an interesting
14 point. You'd think, then, that the board would have a
15 chance to confer if that's an issue in a report of this
16 nature.

17 MR. MEITES: Well, also, if and when the board
18 asks its attorney for an opinion, is that the opinion
19 that's the consensus of management or is that the
20 opinion of the general counsel serving as a lawyer for
21 the board? And that's nothing, that issue. It has
22 come up, and it will come up again.

1 CHAIRMAN MINOW: I see. Well, and sometimes
2 there is a conflict that may require separate counsel.

3 John Levi, do you have something to say about
4 this?

5 MR. LEVI: Well, I was just going to say that
6 in the six months -- I guess it's something like
7 that -- that I've been attending -- or maybe it's more
8 than that now; gosh -- I haven't always agreed with
9 observations made by a lawyer. We're all lawyers, and
10 I don't want to think that we're going to be
11 investigated for having given our best shot.

12 In fact, I would think it's absolutely
13 incumbent on us as lawyers -- we're fiduciaries -- to
14 express our views, and if we don't agree with counsel
15 and it's our professional training that leads us to
16 that conclusion, we have an obligation to say it and
17 even to suggest it.

18 So to the extent that somehow report would be
19 confused either at the Hill or elsewhere as some really
20 creation of, now, yet almost another inspector general
21 office, we aren't required by statute to have a general
22 counsel's office, either.

1 So I just -- I don't want to belabor this
2 point because I think everybody's agreeing with it and
3 we have time issues. But I don't want our board
4 members who are lawyers, almost every one of them, to
5 feel any constraints when they have a question.

6 PRESIDENT FORTUNO: And I agree completely.
7 And I don't think that that's what the report was
8 saying, at least as I read it. And I think that as to
9 the board, what I understood the board to be saying was
10 that when the board asked for legal advice, that the
11 board should be able to get independent, objective
12 legal advice, that meaning independent from management
13 in the sense that it should not be advocating
14 management's position to the board, but it should be
15 responding to the board's question. I think that's all
16 it was referring to.

17 CHAIRMAN MINOW: That seems staffed. So if
18 we --

19 MR. LEVI: And there's a way of expressing
20 that. If there's a disagreement among management,
21 we're big people. Tell us.

22 PRESIDENT FORTUNO: Yes.

1 CHAIRMAN MINOW: Yes.

2 MS. BROWNE: Well, it's been mentioned just a
3 few minutes ago that the information in that report is
4 now moot. Can you explain what the procedures are in
5 place now for a legal opinion if one's asked?

6 PRESIDENT FORTUNO: There's actually -- right
7 now the restrictions that were in place before are no
8 longer in place. There is in fact a new -- and I don't
9 know if the most recent version is ready yet, but you
10 can see the latest version -- there's been a new policy
11 or new protocol being developed. And the idea is to
12 get as much input from as many people as possible.

13 And in fact, it may be helpful for the board
14 to get it, and we can send a draft on Monday so that
15 you can see it and provide your input as well. I think
16 it would be very helpful to get it. And so there is
17 about to be put in place a written protocol to kind of
18 lay out some ground rules.

19 But what happened was, what was in place
20 previous to that, that was rescinded some time in early
21 January, January 4th, I think, so that there are no
22 restrictions. And now folks are able to -- I think the

1 only restriction now is if it's in from in-house, the
2 request has to go through the office director. If it's
3 from the board, then there is no filtering of anything
4 that goes from counsel to the board.

5 And in fact, I think we had -- one question
6 arose, and I spoke to somebody from counsel's office
7 and asked her to communicate with the requestor and to
8 respond directly to the requestor and not involve me in
9 the process. And I did that only because I didn't want
10 to run the risk that, wearing a management hat, I would
11 in any way filter or impact on the independent
12 information being provided.

13 Now, I can disagree with the assessment. But
14 I didn't want for the assessment to be filtered through
15 me. I wanted to be free to disagree with it, but to do
16 so without having influence with the assessment
17 presented to the requestor. I don't know if that's
18 clear.

19 MS. BROWNE: I think it would be very helpful,
20 if you can.

21 PRESIDENT FORTUNO: I was just reminded that
22 the new protocol is a GAO recommendation. So the GAO

1 is of course awaiting that. But we will circulate -- I
2 think folks are gone back at the office. What I'll do
3 is make sure that it's circulated on Monday so, Monday
4 morning, everyone can have a copy of it. And then when
5 you get a chance, if you would, any feedback you have
6 would be most helpful.

7 CHAIRMAN MINOW: I think that would be very
8 helpful.

9 Sharon?

10 MS. BROWNE: And I had just one more question.
11 When I was reading the report -- and unfortunately, I
12 didn't bring my copy with me -- there were probably 30
13 requests for legal opinions that were never published
14 or distributed. Is there any way to recapture those
15 requests and get the OLA up to date?

16 PRESIDENT FORTUNO: I know there were some
17 tables that -- there was some analysis of the number of
18 requests and the number of resulting opinions, and then
19 a review over time as to how many requests and how many
20 opinions. So I'm not sure specifically which aspect of
21 that you're referring to.

22 If it's requests that never resulted in

1 opinions, we can certainly put together a list of that.

2 I think pretty much everything has been responded to,
3 and if Mattie's here, she probably has the latest
4 information on this. Do we have other --

5 CHAIRMAN MINOW: I think we sort of need to
6 move ahead now because this is really not part of this
7 committee's -- sorry, Mattie.

8 MS. COHAN: No. That's fine.

9 (Laughter.)

10 CHAIRMAN MINOW: I think it would be useful to
11 have this circulated. I have questions, but I don't
12 think again this is the time for whether an individual
13 board member can ask for a legal opinion from the
14 office. That seems to me problematic for us, just
15 turning the legal advisor's office into our own
16 lawyers. And also, similarly, individual board members
17 asking for an inspector general report; I think that's
18 also problematic.

19 But I don't think that's my job at this moment
20 to be raising. If no one else is raising that in any
21 other committee, I think it will end up here at some
22 point, but not at this moment. Everything seems to end

1 up here if there's nowhere else.

2 Victor?

3 MR. MADDOX: Yes. Thank you, Martha. I just
4 have a question. I'm not a member of the committee.

5 But I am looking at the report. I guess to
6 make sure, Jeff, we're talking about your letter of
7 July 1, 2010 to Senator Grassley --

8 MR. SCHANZ: Senator Grassley and three
9 congressmen. Yes, sir.

10 MR. MADDOX: In the summary of it, you
11 say -- and first of all, they asked you to confirm that
12 certain representations that had been made to Congress
13 were correct. And you said, in summary, our review
14 "did not confirm that the information previously
15 provided in representations made to Congress by LSC
16 were correct as to key points of concern."

17 And then later on, in items 8 and 9, you
18 identify a couple of specific representations to
19 Congress that apparently were not true. And one was to
20 confirm that the OSC is "free to reject the feedback of
21 the executive team," is expected to exercise
22 independent judgment. And you say, "We could not

1 confirm this. Indeed, we found this statement to be
2 either misleading or untrue."

3 Just so I understand your process, and I think
4 Martha touched on this, before such a representation is
5 made to Congress, it goes through all these different
6 levels of management, including ultimately, I guess,
7 John Constance's office? I mean, is that how it's made
8 to Congress, the representation?

9 MR. CONSTANCE: No.

10 MR. MADDOX: No?

11 MR. CONSTANCE: No. In terms of that
12 representation, it's made by the executive team and
13 signed off on by the entire executive team, including
14 the general counsel.

15 MR. MADDOX: So it's a letter from the
16 president that goes to Congress?

17 MR. CONSTANCE: Right. That's correct.

18 MR. MADDOX: So in this case, we're talking
19 about -- sorry.

20 CHAIRMAN MINOW: Go ahead, please.

21 MR. MADDOX: We're talking about a letter
22 ultimately that went through the executive team, but

1 not through the congressional liaison operation. Is
2 that fair to say?

3 MR. CONSTANCE: Well, we're merely the
4 deliverers. I have no independent right or
5 responsibility to represent anything to Congress that
6 I'm not directed to do by management.

7 MR. MADDOX: Right. So in this case, you
8 weren't involved in that process. And you weren't
9 interviewed by the OIG in connection with --

10 MR. CONSTANCE: I was not interviewed by the
11 OIG.

12 MR. SCHANZ: But you did respond to our
13 inquiry.

14 MR. CONSTANCE: I received interrogatories --

15 JUDGE SINGLETON: I'm sorry. But could the
16 person who's respond to the questions get closer to a
17 microphone?

18 MR. CONSTANCE: Thank you. This is John
19 Constance, Office of Government Relations and Public
20 Affairs, for the record. I did respond to an
21 interrogatory. Either by the weight of other evidence,
22 I didn't see any reflection of my responses in the

1 interrogatory reflective in the final report. But I
2 did in fact respond to an interrogatory.

3 CHAIRMAN MINOW: So that's related to the
4 question that I asked earlier: Did everyone who was
5 asked a question have a chance to have their views
6 reflected, and even have a chance to look at the
7 report, or how do we know that the report included all
8 the reviews?

9 Again, this is a moot question. But it does
10 raise an issue about procedures in the future.

11 MR. MADDOX: Yes. I mean, it's troubling,
12 obviously, that our OIG is finding that representations
13 of fact made to Congress --

14 CHAIRMAN MINOW: Yes. Cannot be confirmed.
15 Yes.

16 MR. MADDOX: -- are simply not true or are
17 significantly misleading. In fact, there was a
18 statement, I think on page 8 in your report, Jeff, to
19 the effect that there was a representation made to the
20 independent auditor that was patently misleading.

21 The general counsel stated -- let's
22 see -- "Nonetheless" -- I'm sorry. It's not entirely

1 clear what the context is. It's a long section of your
2 letter.

3 But on page 8 of your report, you're talking
4 about, "The handling of this particular matter by the
5 president and executive team appeared particularly
6 disingenuous. The general counsel clearly stated to
7 them, 'You've heard our view on this. You know what
8 our opinion is. It's marked draft, but it's our
9 opinion.' And then, nonetheless" -- this is you
10 speaking now, Jeff -- "nonetheless, they informed
11 the" -- "they adopted the formal posture of saying, in
12 response to the auditor's finding, that OLA was still
13 in the process of completing its analysis. This was
14 patently misleading."

15 What did you mean when you say, "In response
16 to the auditor's finding"? Whose finding was that?

17 MR. SCHANZ: GAO took a look -- in part of
18 what I'll affectionately call GAO-3, they took a look
19 specifically at a Northwest Justice request for an
20 opinion on potential future income. And that opinion
21 did not move through management for a period of about
22 four years.

1 GAO got that information from Senator
2 Grassley's staff, and they specifically took a look at
3 that opinion to see why it was not issued in a more
4 timely manner since it involved putative income at the
5 intake stage.

6 MR. MADDOX: So the reference here to the
7 auditor is to the GAO?

8 MR. SCHANZ: Correct.

9 MR. GALLAY: This is Joel Galley, special
10 counsel to the OIG. I believe this references -- and
11 Mr. Fortuno can jump in on this at any time -- but this
12 was a reference, I believe, to the matter involving the
13 classification for tax purposes of contractors,
14 employees versus contractors.

15 MR. MADDOX: So the question then, though, is
16 the auditor in this paragraph is who? Is it the
17 independent outside auditor?

18 MR. GALLAY: That's correct.

19 CHAIRMAN MINOW: The "patently misleading" is
20 what? I guess any of us would be concerned -- I don't
21 mean to interrupt, Victor -- if there's a statement by
22 the IG that there's been misrepresentation to Congress.

1 And the earlier paragraph seemed to refer to a
2 practice that is no longer current.

3 And if that's the case, I would hope that we
4 have an updating to Congress that whatever may have
5 been a problem in the past is not a problem now, and
6 any issue of misrepresentation to Congress is not a
7 current issue. I would like myself to see something
8 like that, corrected.

9 As to this paragraph, which is about a
10 different episode, I found it very hard to understand
11 it. But if there is something that's currently
12 standing out there as a misrepresentation to Congress,
13 I would also like that to be corrected. And if there
14 isn't, I'd like to understand the paragraph better. Is
15 that fair?

16 MR. MADDUX: Precisely.

17 MR. LEVI: Well, I agree with that. And I
18 also had heard something else here that's a bit
19 troublesome to me. And I don't want to belabor this,
20 but if I heard Mr. Constance correctly, he was saying
21 that he was never spoken to.

22 But he's part of the senior management team.

1 And I think if I'm putting together what he said with
2 what you said, Jeff, you guys elected to rely on, I
3 guess, just a written interrogatory from them but
4 conversations with the OLA folks, as opposed to
5 conversations with everyone.

6 They're all in the building. The report goes
7 to Congress. And I don't know why you made that
8 decision, and I would like at some point to more fully
9 understand that because there is an issue of fairness
10 here also.

11 If our executive team was not given the
12 opportunity in the presence of an interview to
13 elaborate on what they meant or didn't, the nuances,
14 I'm not sure that that would pass the test that we as
15 lawyers normally regard as the American standard of due
16 process. And it may work in certain circumstances, but
17 it doesn't feel right to me.

18 MR. GALLAY: Without getting into an exchange
19 on that point at this time -- I don't think it's
20 appropriate -- but just one point to make is that the
21 focus of the questions from the Hill and the focus of
22 the inquiry that took place here was on the impact on

1 OLA and the general counsel of the various issues that
2 were present.

3 So in exploring that, the critical information
4 was what in fact the general counsel and OLA --

5 MR. LEVI: They perceived?

6 MR. GALLAY: Yes.

7 CHAIRMAN MINOW: Well, again, I agree with
8 everyone this is not what we should be spending more
9 time on. But at some point in some committee
10 somewhere, I think all of the new board members would
11 be helped by understanding the processes of how, when
12 investigations occur, who's involved? Is there one
13 protocol? Is it varied by subject matter?

14 If there is someone who feels like they should
15 be part of an inquiry, what is their method of being
16 part of that inquiry? And for me, most importantly, if
17 we have a representation to Congress, do we have a
18 method of verifying whether or not the representation
19 is correct? And if we later find out it was incorrect,
20 do we have a prompt way to correct that representation?

21 Those are the questions. I don't know, Mr.
22 Chair, where they end up. But I think they're not

1 going to be resolved here at this moment.

2 MR. LEVI: They're going to end up in your
3 committee.

4 CHAIRMAN MINOW: Oh, great.

5 (Laughter.)

6 MR. CONSTANCE: Could I just say one thing
7 just for the record? And I've sufficiently calmed down
8 now, I think, that I can say this evenly. And that is,
9 I do not feel that there was a misrepresentation to
10 Congress of facts.

11 I was in the room when many of these OLA
12 opinions, if not all of them, were discussed. I don't
13 know all aspects of the report that finally came out.
14 But I will tell you this, and I will tell the board
15 this: The day that I feel I'm being asked to make a
16 misrepresentation to Congress is the day I resign from
17 this position.

18 And I have not been asked that at this point
19 in my career, not here, and fortunately not before I
20 came here, for 20 years doing this job. So just for
21 the record, I don't feel a misrepresentation was made.

22 And the IG and I will just have to respectfully

1 disagree on that point.

2 CHAIRMAN MINOW: Well, thank you, John, for
3 that statement. I think that leaves a question for the
4 president and for the board about whether, in the past,
5 there was a misrepresentation made which should be
6 corrected, or there wasn't one made, in which case this
7 report needs to be corrected. Because it's standing
8 out there, and that troubles me.

9 So I put that to the chair and the president
10 to discuss and not me, thank you, right now.

11 (Laughter.)

12 CHAIRMAN MINOW: I'm mindful that we've now
13 spent an hour and 15 minutes when we were only allotted
14 a half, and we have not yet gone to new business. And
15 so I regret that. But shall I dispense with the new
16 business, or shall I open the question to new business?

17 Mr. Chair, I ask you what to do.

18 MR. LEVI: Proceed. You've got to run your
19 meeting.

20 CHAIRMAN MINOW: Okay. New business?

21 PROFESSOR KECKLER: I have one brief, very
22 brief, item of new business.

1 CHAIRMAN MINOW: Sure.

2 PROFESSOR KECKLER: For the next time, due to
3 time constraints, for the next regularly scheduled
4 meeting, I'd like to add an item to the agenda, for the
5 October meeting. And that item would be a change to
6 the charter of this committee to expand its performance
7 review to include all officers described by Article 6
8 of the bylaws as serving at the pleasure of the board,
9 with such performance being reviewed by the committee.

10 CHAIRMAN MINOW: Thank you. So we will add
11 that item to the agenda for the next duly announced
12 committee meeting.

13 And I would now entertain a motion to adjourn
14 the committee.

15 MS. BROWNE: I'll move to adjudication --

16 PROFESSOR KECKLER: Pardon. On the current
17 agenda, there is --

18 CHAIRMAN MINOW: Oh, sorry.

19 MR. LEVI: You're adjourning to a closed
20 session, I believe.

21 PROFESSOR KECKLER: Right. There's a public
22 comment, and then --

1 CHAIRMAN MINOW: Sorry. Yes, I didn't know
2 the order in which that occurs. Okay.

3 MR. LEVI: You've got to ask for -- is there
4 public comment?

5 CHAIRMAN MINOW: Public comment?

6 (No response.)

7 CHAIRMAN MINOW: Okay. Now I'd entertain a
8 motion to move to a closed session.

9 M O T I O N

10 MS. BROWNE: I'll move to adjourn to a closed
11 session.

12 PROFESSOR KECKLER: Second.

13 CHAIRMAN MINOW: We'll so adjourn to a closed
14 session.

15 (Whereupon, at 4:52 p.m., the committee was
16 adjourned to executive session.)

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