

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE
OPEN SESSION

Sunday, October 20, 2013

2:26 p.m.

Renaissance Pittsburgh Hotel
107 Sixth Street
Pittsburgh, Pennsylvania 15222

COMMITTEE MEMBERS PRESENT:

Martha Minow, Chair
Sharon L. Browne
Julie A. Reiskin
Charles N.W. Keckler
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Harry J.F .Korrell, III
Victor B. Maddox
Father Pius Pietrzyk, O.P.
Gloria Valencia-Weber
Laurie Mikva
Robert J. Grey, Jr. (by telephone)

ALSO PRESENT:

James J. Sandman, President

STAFF AND PUBLIC PRESENT:

James J. Sandman, President

Lynn Jennings, Vice President for Grants Management

Wendy Rhein, Chief Development Officer

Richard L. Sloane, Chief of Staff & Special Assistant
to the President

Rebecca Fertig, Special Assistant to the President

Janet LaBella, Director, Office of Program
Performance

Carol A. Bergman, Director, Office of Government
Relations and Public Affairs

Carl Rauscher, Director of Media Relations, Office of
Government Relations and Public Affairs

Ronald S. Flagg, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary

Jeffrey E. Schanz, Inspector General

David Maddox, Assistant Inspector General for
Management and Evaluation, Office of the
Inspector General

Herbert S. Garten, Non-Director Member, Institutional
Advancement Committee

Allan J. Tanenbaum, Non-Director Member, Finance
Committee (General Counsel, Equicorp Partners)

Terry Brooks, ABA

Chuck Greenfield, National Legal Aid and Defender
Association (NLADA)

Don Saunders, National Legal Aid and Defenders
Association (NLADA)

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

2 (2:26 p.m.)

3 CHAIRMAN MINOW: All right. This is Martha
4 Minow and I would like to call this session of the
5 Governance and Performance Review Committee, as duly
6 noticed in the announcement.

7 M O T I O N

8 CHAIRMAN MINOW: And I would entertain motion
9 to approve the agenda.

10 MS. BROWNE: So moved.

11 CHAIRMAN MINOW: Second?

12 MR. KECKLER: Second.

13 CHAIRMAN MINOW: All in favor?

14 (Chorus of ayes.)

15 CHAIRMAN MINOW: Thank you.

16 M O T I O N

17 CHAIRMAN MINOW: Motion to approve the
18 minutes?

19 MS. REISKIN: So moved.

20 MR. KECKLER: So moved.

21 CHAIRMAN MINOW: And there is a second.

22 Anyone have any -- no changes to the minutes, right?

1 So, all set? Everybody in favor?

2 (Chorus of ayes.)

3 CHAIRMAN MINOW: Excellent. And I see that we
4 have Carol here to give us a report on the
5 implementation of the GAO recommendations.

6 Carol Bergman.

7 MS. BERGMAN: Hi. It is a pleasure to come
8 before the Committee with good news about the status of
9 the GAO reports.

10 Folks may remember that at the July Board
11 meeting there was a lot of concern about where
12 we -- how long it was taking us to deal with closing
13 out the remaining recommendations. And Jim assured the
14 Board that we were going to move with great dispatch,
15 and I think we have.

16 So, since the July Board meeting, the GAO has
17 closed out recommendation number four. This is the one
18 that requires a cost benefit assessment of improving
19 the effectiveness of internal controls. That was done
20 on August 12th. And GAO's online tracking system
21 has -- now reflects that.

22 And then, moving on, recommendation number

1 five. On October 8th, LSC provided GAO with a
2 close-out memo. This is "Improving Grantee Risk
3 Assessment Criteria." We sent a written policy that
4 reflects the risk criteria used by both OPP and OCE for
5 selecting grantee site visits. And LSC, as required by
6 GAO, informed all staff of the policy, and it has been
7 posted on LSC's Intranet website. This is under
8 review.

9 CHAIRMAN MINOW: Hold on one second.

10 MS. BERGMAN: Yes.

11 MS. BROWNE: I couldn't find it on LSC
12 website. I don't know -- it is probably because I
13 don't know how to navigate it well. But I looked for
14 it, because I was curious.

15 MS. BERGMAN: On the Intranet, not the
16 Internet. It is not on LSC.gov.

17 MS. BROWNE: But we should be able to get it,
18 shouldn't we, or no?

19 MS. BERGMAN: Jim?

20 MR. SANDMAN: Yes.

21 MS. BERGMAN: Yes. We will make sure you do.

22 MS. BROWNE: So where would it be, if it is

1 not on the LSC website? You said it was where?

2 FATHER PIETRZYK: Intranet --

3 MS. BERGMAN: Intranet. So internal to LSC.
4 But either -- we need to address that, obviously.

5 MR. SANDMAN: It is a guidance document for
6 LSC staff on how to go about the process of identifying
7 which programs will be visited by OPP and OCE in any
8 particular year. But, of course, we can make that
9 available to the Board.

10 MS. BROWNE: It just said "LSC website," and
11 that is where I --

12 MS. BERGMAN: You are right, and that is what
13 it says on the tracking document, and we should have
14 been more clear. But I will make sure, after this
15 meeting, that it is sent out to the entire Board, so
16 that everybody can see it.

17 MS. BROWNE: That would be great.

18 CHAIRMAN MINOW: Great.

19 MS. BERGMAN: Of course. On October 17th we
20 sent out a close-out memo to GAO regarding
21 recommendations 9, 10, and 11. These are regarding
22 performance management and staffing needs assessments.

1 And so it is different than what is in your tracking
2 document. The tracking document indicates that it was
3 going out on October 31st. And, in fact, it is done,
4 it was sent to GAO on the 17th.

5 CHAIRMAN MINOW: Well done, great.

6 MS. BERGMAN: It took teamwork, believe me.
7 There are a lot of folks who were involved in this
8 process.

9 MS. REISKIN: Did you say 9, 10, and 11?

10 MS. BERGMAN: Nine, ten, and eleven, correct.

11 Nine is developing and implementing procedures to link
12 performance measures to specific offices and core
13 functions and activities and to LSC's goals and
14 objectives. And LSC's adopted procedures for
15 establishing annual goals and performance measures.

16 Each year, the directors of LSC's offices are
17 required to draft an office performance plan that
18 details the work and goals of each office, and the
19 procedures have been distributed to all LSC office
20 directors, and will be redistributed annually.

21 With regard to recommendation number 10, this
22 is developing and implementing procedures for

1 periodically assessing office performance measures to
2 ensure they are up to date. LSC has established
3 procedures for annual setting of goals and
4 establishment of performance measures, and quarterly
5 review by LSC's president and office directors of the
6 goals and performance measures.

7 And with regard to recommendation number 11,
8 which is developing and implementing procedures to
9 provide for assessing all LSC component staffing needs
10 in relation to the strategic human capital plans, LSC
11 has adopted a strategic human capital plan that
12 requires regular assessment of component staffing needs
13 and a skills gap analysis. The plan includes a
14 description of specific procedures for assessing
15 staffing needs in relation to LSC strategies and
16 strategic human capital plan.

17 So, those were all sent to GAO as attachments
18 on the 17th.

19 Now, needless to say, I was mentioning to
20 Martha during the shutdown, unlike most agencies, where
21 you would get a bounce-back email indicating that staff
22 had been furloughed, GAO's response was that GAO was

1 closed during the shutdown. So just FYI.

2 We did get a response to the first one with
3 regard to recommendation number five, because that had
4 been sent earlier. Clearly, somebody was doing triage
5 on all their emails. They let us know that they will
6 get to it.

7 So the one remaining recommendation that we
8 have not sent any kind of close-out is number 12, which
9 is regarding staff performance evaluations. And LSC is
10 currently drafting a performance management system
11 process to replace the performance management process
12 that is in LSC's employee handbook. And this requires
13 Board approval. And management intends to submit the
14 proposed process to the appropriate Board Committee by
15 the end of the year.

16 CHAIRMAN MINOW: Well, thank you, Carol. I
17 wonder -- maybe, Jim, you would like to comment not
18 only about 12, but the other ones that deal with
19 employment. I know you have been in communication with
20 the union, for example. I think we would all like to
21 hear how that is going.

22 And then, specifically on 12, I will then

1 suggest a process for how we go about Board review.

2 MR. SANDMAN: The process with the union has
3 gone well. The documents that we submitted to close
4 out recommendations 9, 10, and 11 were really
5 management documents. And we can make those available
6 to the Board, if you are interested in seeing them, in
7 addition to the documents that we prepared for
8 recommendation number five.

9 On the performance management system that is
10 necessary to close out recommendation 12, we have been
11 in regular communication with the union about that.
12 Things have gone well. I think we will be in a
13 position to send something to the appropriate committee
14 of the Board shortly.

15 The reason that has to come before the Board
16 is because our personnel handbook currently contains an
17 evaluation system, which will be superseded by what it
18 is that we are recommending. The handbook provides
19 that any significant changes to LSC's personnel
20 handbook must be approved by the Board of Directors. I
21 think a change to the performance system is a
22 significant change to the handbook.

1 CHAIRMAN MINOW: Yes.

2 MR. SANDMAN: So that is what requires that we
3 go through this additional process before we can make a
4 submission to GAO.

5 CHAIRMAN MINOW: Excellent. And it is
6 wonderful to see progress on this. It is really a
7 fulfillment of elements of the Strategic Plan, as well
8 as a charge that you had when you came on board, Jim.
9 So this is just great.

10 I think that, as this involves a complicated
11 matter, it potentially could go to Ops and Regs because
12 it is a personnel matter. But since I am so eager to
13 actually close out this last one of the GAO
14 recommendations, I -- and having talked with the Chair
15 of Ops and Regs, I propose that this Committee keep
16 jurisdiction of this matter, but have a meeting that we
17 will schedule, a telephonic meeting, when we get the
18 draft reports, the draft proposal from management.

19 And although all members of the Board are
20 always invited to every Committee meeting, this one the
21 members of Ops and Regs will get actual personal
22 invitations, and we will have a robust discussion and

1 try to move it along expeditiously. Since Ops and Regs
2 has, as we could tell from the prior Committee meeting,
3 a lot on its plate, I think this is a way to move ahead
4 on this one.

5 Does that meet with everyone's approval?

6 MR. KECKLER: Yes, Martha. And it is -- I
7 think that it is a matter that is -- in terms of
8 whether it sort of creates a precedence, we need to
9 think about it. But I think, in this circumstance in
10 which it has been the charge of this Committee so long
11 to work on GAO, and it does also -- I think also it
12 arguably falls within this Committee's jurisdiction in
13 that, as a performance review system, it ultimately
14 feeds into our --

15 CHAIRMAN MINOW: That is true.

16 MR. KECKLER: It ultimately feeds into the
17 performance assessment of the officers and the
18 president --

19 CHAIRMAN MINOW: That is true.

20 MR. KECKLER: -- that we have a charge over.

21 So, I think that we will all sort of -- I will
22 be there.

1 CHAIRMAN MINOW: Right.

2 MR. KECKLER: I am there anyway. But,
3 certainly, members of the Operations and Regulations
4 Committee should be there to provide input into it. It
5 is sort of a unique circumstance. But we will look
6 forward to that discussion.

7 CHAIRMAN MINOW: That is excellent. Julie?

8 MS. REISKIN: Yes, I want to really
9 congratulate the staff on this. I kind of dreaded
10 opening up this document, and I was so excited when I
11 saw it. So this is great. And I would like those
12 documents, I would love to look at them.

13 I had two questions. One is, does the union
14 have to approve the number 12, or are you just -- is
15 this just a good-faith gesture that you are working
16 with? That is one question.

17 MR. SANDMAN: This subject is --

18 CHAIRMAN MINOW: That is a good question.

19 MR. SANDMAN: -- is something that is subject
20 to --

21 CHAIRMAN MINOW: Permissive.

22 MR. SANDMAN: It is a permissive subject of

1 bargaining, not a mandatory subject of bargaining. But
2 we have shared what we are doing with the union, and I
3 think have agreement on it. So we are covered, either
4 way.

5 MS. REISKIN: Okay. And my second question is
6 you just said that substantive change in the personnel
7 manual requires approval by the whole Board. I am
8 curious, Jim, if you think that is something that we
9 should maybe change, if that is -- that is kind
10 of -- in most non-profits, that is more the purview of
11 the AD, and I don't know if -- maybe I am not
12 understanding something, I was just --

13 MR. SANDMAN: God bless you, Julie Reiskin.

14 (Laughter.)

15 CHAIRMAN MINOW: I think that that is a really
16 great question, Julie. And, Jim, of course, you can
17 answer that. But I think it is not inappropriate for
18 either this Committee or Ops and Regs, after we get
19 this one done, to revisit that particular question and
20 see whether we should change that provision.

21 FATHER PIUS: I assume that is fairly unusual
22 in the industry. Do we know the history of it, why

1 that --

2 MR. LEVI: We inherited it that way. I don't
3 know.

4 CHAIRMAN MINOW: So I think we will just
5 plan -- and Carol will remind me to do so -- to make a
6 point of revisiting that and deciding whether it
7 belongs here or in Ops and Regs at that point.

8 MR. SANDMAN: In response to Julie's question,
9 my experience has always been that this is a
10 quintessential management function, and I think it is
11 unusual governance to have the Board of Directors
12 getting involved in the drafting and approval of a
13 personnel handbook.

14 CHAIRMAN MINOW: I think it absolutely is.
15 And now, also, whatever the origin of the rule, it was
16 adopted before there was a union.

17 MR. LEVI: Right.

18 CHAIRMAN MINOW: And so it will be timely to
19 revisit it.

20 Jim -- no, John had his hand up at some point.

21 MR. LEVI: Well, actually, I had my hand up
22 for the very same reason.

1 CHAIRMAN MINOW: Yes.

2 MR. LEVI: And then the question is, so that
3 provision of the handbook itself ought to be the
4 subject of some committee taking a look at it. I don't
5 see any reason why that can't happen simultaneously
6 with all of this, because it is so odd and unusual.

7 CHAIRMAN MINOW: Okay. Well, if we have time,
8 we could do that.

9 MR. LEVI: And the question is whether it
10 would be your committee or Charles', and I don't --

11 CHAIRMAN MINOW: I don't care, yes.

12 MR. LEVI: I don't have a strong feeling on
13 that.

14 MR. KECKLER: I think that is more in the ops
15 and regs. It is something that we can consider as
16 management develops it.

17 My only thought on it is that we have
18 proceeded, and the employees have proceeded under the
19 expectation that any changes, in fact, go to the Board,
20 and they have this level of insulation now. So I
21 wouldn't want to do it before -- I mean we will go
22 ahead and do this.

1 MR. LEVI: Do this, and then that.

2 MR. KECKLER: And then sort of --

3 CHAIRMAN MINOW: That is right.

4 MR. KECKLER: As a going-forward basis --

5 CHAIRMAN MINOW: That is right.

6 MR. KECKLER: -- provide full notice that in
7 the future there might be a somewhat different process.

8 CHAIRMAN MINOW: Absolutely right.

9 MR. KECKLER: And I think that is something
10 that Ops and Regs can take up.

11 CHAIRMAN MINOW: Great, great.

12 MR. KECKLER: Whenever management has a sort
13 of a full -- whenever we are ready, you know, at the
14 January or the April meeting.

15 CHAIRMAN MINOW: That is great. Well, I want
16 to also echo Julie's comments and just say, Carol, you
17 have worked magic here. Three years some of these have
18 been pending. And during that time period I think
19 Sharon has had three grandchildren.

20 (Laughter.)

21 CHAIRMAN MINOW: But -- is that true? But in
22 some respects, three years is the blink of an eye for

1 the operations of the Federal Government. And so I
2 think we are just really, really pleased.

3 More importantly, each of these
4 recommendations have led to some very important changes
5 in our own internal operations, and we are better for
6 it. And it will be really good to be able to say they
7 are all done. So, thank you, and we are almost there.

8 MS. BERGMAN: That is great, and actually, the
9 one other note I would make, there have been
10 conversation -- we initially had been under the belief
11 that GAO was going to require two consecutive years of
12 implementation. And, in fact, they have now confirmed
13 that we only need to submit a performance management
14 system plan to close out the recommendation.

15 CHAIRMAN MINOW: That is fabulous.

16 MS. BERGMAN: And they will not require the
17 two years. So --

18 CHAIRMAN MINOW: I was hesitant to even ask
19 about that.

20 MS. BERGMAN: Yes, I know you didn't want to
21 ask the question.

22 (Laughter.)

1 CHAIRMAN MINOW: That is excellent. Really,
2 really good. Wonderful.

3 So, unless there are further questions on
4 that, we will move on to the next item. Any further
5 questions about the GAO?

6 (No response.)

7 CHAIRMAN MINOW: Okay. So our item number
8 four is to report on the revised forms for Board
9 evaluation.

10 And, Carol, please.

11 MS. BERGMAN: Thanks, Martha. In your
12 handbook -- or in the Board book, excuse me -- is the
13 revised and hopefully somewhat simplified Board and
14 Committee evaluations that I have worked with our
15 esteemed Chair to create a much more simplified
16 version.

17 So, the goal here is to give you a hard copy
18 to take a look at, in case anybody has any additional
19 comments, and then, once any other additional edits are
20 done, we are going to make this online. So you are
21 welcome, if you still want to hand in -- you want to
22 send me or scan print copies, that is fine. But we

1 will send out an email and make everything online.

2 The way it works is we have reduced it to two
3 documents. There is a separate document that lists the
4 roles and responsibilities of the committees, and that
5 is -- so that is no longer tied to every single
6 committee evaluation. And you will be sent an
7 evaluation form for every committee that you serve on,
8 and then one evaluation form just to evaluate your
9 service on the Board, and the Board as a whole. That
10 is what has been now morphed into one document instead
11 of two separate ones.

12 So, I would say we will give you maybe another
13 week, if anybody -- and taking a look at the hard copy
14 while you are here, get back to me. Otherwise, we will
15 take it as final and move it online and we will send
16 out a note everybody so it can be done that way.

17 CHAIRMAN MINOW: Well, that is terrific. And,
18 Carol, thank you for your indispensable guidance here.

19 I think we all felt that the process, while
20 valuable, was a little bulky. And this will, I think,
21 streamline it.

22 Julie?

1 MS. REISKIN: Will we use Survey Monkey?

2 MS. BERGMAN: I think we are not going to do a
3 Survey Monkey for various reasons that my --

4 MS. REISKIN: Just curious.

5 MS. BERGMAN: -- advisor said not to do it. I
6 think it is going to be, instead, an interactive Word
7 document, so that it is not a --

8 CHAIRMAN MINOW: It is a live -- right, right.

9 MS. BERGMAN: Whatever it is, you can do it
10 and then just send it back. You don't have to do
11 anything more technologically complex with it than
12 that. Okay?

13 CHAIRMAN MINOW: It is such a small group, I
14 don't think we need to use a Survey Monkey. So that is
15 great.

16 MS. BERGMAN: Yes, I didn't see -- yes.

17 CHAIRMAN MINOW: That is terrific, great.

18 So, move on to the report on the Public
19 Welfare Foundation grant, LSC research agenda,
20 presentation by Jim Sandman.

21 MS. REISKIN: There wasn't a document for this
22 one, was there?

1 MR. SANDMAN: There is no document with this.

2 MR. SANDMAN: I circulated to the Board a
3 couple of weeks ago the online survey that our
4 consultants distributed to all 134 of our grantees.
5 The final date for grantees to respond to that, with a
6 little bit of an extension, was this past Wednesday.
7 And I am happy to report that the response rate was
8 overwhelming. Our consultants were astounded by the
9 high response rate: 121 out of 134 grantees responded.

10 If you had a chance to look at the survey, it
11 was a lengthy survey. We looked at ways of trying to
12 cut it down, but we had prepared the survey with the
13 assistance of our seven-member advisory committee. We
14 also did a pilot with 10 additional grantees. Some of
15 the Committee and some of the pilot group commented
16 that it was long, but no one had any suggestions for
17 what to delete.

18 (Laughter.)

19 MR. SANDMAN: So, we just figured we would go
20 ahead with what we had.

21 Our consultants have begun their analysis of
22 the responses to the survey, and plan to make a

1 presentation on the survey results at the annual
2 conference of NLADA in Los Angeles on November 7th.
3 That will be followed by a separate meeting for any
4 attendees who would like to discuss the results and
5 have further input into our work on this project. So I
6 anticipate that the first session will be a panel
7 presentation of results with some discussion. The
8 second session will be more interactive, and allow us
9 to get additional input and have more discussion about
10 the future of this project.

11 I would propose that our consultants do a
12 briefing of either this Committee or the whole Board at
13 our January meeting.

14 CHAIRMAN MINOW: I think that would be great,
15 wonderful.

16 MR. SANDMAN: I think at that point they will
17 certainly be in a position to advise on the results of
18 the survey. But I think they should be beyond that,
19 and able to discuss the substance of their project and
20 what their thinking is at that point.

21 The Board has not had the opportunity to meet
22 our consultants and hear from them, and I think it

1 would be timely to do that in January.

2 CHAIRMAN MINOW: Wonderful. This Committee
3 can facilitate it, but I am sure the whole Board would
4 be interested.

5 MR. LEVI: Are the consultants going to hand
6 out something at NLADA? And, if they are, could that
7 be given to the Board?

8 MR. SANDMAN: We haven't discussed exactly
9 what the protocol is going to be, since they just got
10 the survey results. But certainly, if there are
11 handouts, we will get those to the Board, yes.

12 CHAIRMAN MINOW: That is great. The topic
13 that is being addressed here has only gotten more
14 important since we first authorized this work. And so
15 I am sure we are all eager to hear about this.

16 Julie, did I see your hand again?

17 MS. REISKIN: Yes, I just -- could someone
18 resend that survey? Because I can't seem to find it.
19 You said that you sent us one to look at.

20 MR. SANDMAN: Yes --

21 CHAIRMAN MINOW: And I saw a draft, yes.

22 MR. SANDMAN: I sent a link to it. I think I

1 sent a pdf of it, too. I pause for a minutes because I
2 think the link may no longer be live, since the survey
3 period is closed. But I can certainly get you --

4 MS. REISKIN: If it is a big -- a lot of work,
5 don't bother. I just --

6 MR. SANDMAN: It is not a lot of work; we will
7 get it to you.

8 FATHER PIUS: You sent a pdf.

9 CHAIRMAN MINOW: I think it was a pdf, yes.

10 MR. SANDMAN: The date of that, Father Pius?

11 FATHER PIUS: October 2nd.

12 CHAIRMAN MINOW: Thank you, Father Pius. If
13 you have it, maybe you can forward it to Julie. That
14 would be wonderful. Thank you so much.

15 MS. REISKIN: That would be great. Thanks.
16 Sorry.

17 CHAIRMAN MINOW: Excellent. So, Jim, you are
18 done with this. That is great. Well, we will look
19 forward to this at the next meeting. And if there is
20 anything we can be shown beforehand, I think we would
21 all be eager to see it.

22 Excellent. Carol, are you leaving? If so, we

1 will all say thank you. Thank you, Carol. Thank you
2 so much.

3 So, we will now turn to "Consider and act on
4 proposed reforms of our Conflict of Interest Policy,"
5 and we are helped here by Ron Flagg. And, Ron, this is
6 one of the many reasons we are so glad that you are
7 here.

8 MR. FLAGG: Well, thank you, I think.
9 Management is currently looking at, really, all of our
10 internal policies with two goals in mind, at least.
11 One is to take a look at them and see if they make
12 sense and see if they measure up to the best practices
13 in the not-for-profit and grant-making world.

14 And, second, to consolidate these policies and
15 probably a couple of different manuals, one dealing
16 with employee-centric policies and the other with
17 administered policies such as procurement and
18 contracting so that all of our employees and the public
19 will know where they can find guidance on those.

20 And we have tried to prioritize these. So the
21 first of the employment policies that we have taken a
22 look at is what has been a very small portion of the

1 Code of Conduct dealing with conflict of interest.

2 I want to thank the Office of Inspector
3 General, who worked very helpfully and cooperatively
4 with us in looking at and revising this Conflict of
5 Interest Policy. And the result of it is in your Board
6 book, which -- with about a seven-page revised policy.

7 And really, the changes are too numerous to summarize
8 orally, but they are set forth in the cover memo. At
9 least the biggest changes are highlighted in the cover
10 memo at pages one and two.

11 CHAIRMAN MINOW: Thank you, Ron. And this is
12 just good hygiene. This is just a really good thing to
13 do regularly, in particular, having looked at some of
14 the changes that are suggested here, they really are
15 called for. And so, I am really pleased this is
16 happening.

17 I would like to open it up for discussion, if
18 anyone has any particular changes they want to discuss,
19 or further changes they want to raise.

20 Sharon?

21 MS. BROWNE: I think this is really a good
22 Conflict of Interest Policy, so I commend you on

1 getting this together.

2 My concern is that you mention that this is
3 the first of many different types of things that you
4 are going to be considering, policies you are going to
5 be considering, and that eventually it is going to be
6 one consolidated policy or manual.

7 MR. FLAGG: No, no. It will be one --

8 CHAIRMAN MINOW: Document.

9 MR. FLAGG: They will be found in one place.
10 Realistically, it is possible that our employees will
11 still have a ring binder, but it will be one ring
12 binder for administrative policies and one for
13 employment policies and on the Internet and on our
14 Intranet there will just be two links.

15 But it won't be a single, monolithic policy.
16 The Conflict of Interest Policy will be the Conflict of
17 Interest Policy. The next policy we are working on is
18 the Whistleblower Policy. It is not going to be one,
19 "This is the omnibus employment policy for LSC." There
20 still will be separate policies, but everybody will
21 know if you want to know where those policies reside,
22 this is where they reside. So that is -- what I meant

1 by saying we are going to consolidate these, really,
2 sort of physically or virtually consolidate them.

3 CHAIRMAN MINOW: But you had a question,
4 Sharon.

5 MS. BROWNE: Yes. Well, I think that is
6 terrific, that it is in one place.

7 MR. FLAGG: Right.

8 MS. BROWNE: But as you are going through this
9 process, is it possible that there will be any
10 confusion -- because right now it seems to be spread
11 out in different manuals and places -- that there could
12 still be a conflict? Or does this supersede all other
13 types of conflict of interest policies?

14 MR. FLAGG: No, that is a great question. And
15 we are currently, as I speak, engaged in an effort to
16 identify where all of the guidance is.

17 And I don't want to overstate the problem. It
18 is not -- and the Conflict of Interest policies are
19 probably among the --

20 CHAIRMAN MINOW: Fewer, yes, yes.

21 MR. FLAGG: There are several conflict of
22 interest policies. That does not happen elsewhere.

1 But you are right. We are going to make sure
2 that people understand that this is the conflict of
3 interest policy, that any other references to a
4 conflict of interest policy elsewhere, either in our
5 Code of Conduct or elsewhere -- because I think there
6 are at least two other places that the Conflict of
7 Interest Policy resides. And we will make sure that
8 those references are removed, and that people are
9 directed to this Conflict of Interest Policy.

10 CHAIRMAN MINOW: But I take it that, in part,
11 Sharon is saying that inside the body of this policy it
12 should say, "This is the policy, and it supersedes any
13 prior policies."

14 MS. BROWNE: Correct, with a big date.

15 CHAIRMAN MINOW: Yes.

16 MS. BROWNE: And so, with that in mind, and
17 that clarification, shouldn't the resolution that we
18 are going to be recommending to the full Board also
19 include the language that this is the policy and it
20 supersedes any past policies?

21 CHAIRMAN MINOW: I think that is a really good
22 suggestion, Sharon.

1 MS. BROWNE: And then the other suggestion I
2 would have is I just don't like passive language. It
3 just -- using the word -- in the resolution on the
4 third whereas you have the word "would". Isn't this
5 really "will benefit," instead of a "would"?
6 Just -- passive language makes everybody go to sleep,
7 whereas more active or -- so I would just suggest that
8 it change from "would" to "will benefit".

9 CHAIRMAN MINOW: I think that is a great
10 suggestion. Can we make that change, Ron?

11 MR. FLAGG: Yes. We will make -- by Wednesday
12 we will have -- we will change "would" to "will," and
13 have --

14 CHAIRMAN MINOW: Tuesday?

15 MR. FLAGG: Tuesday, sorry about that, and
16 have the "Therefore, be it resolved" clause say that
17 the Board adopts the attached Conflicts of Interest
18 Policy and directs that the new policy supersede any
19 prior existing policies.

20 MS. BROWNE: Then my last comment -- and,
21 again, this is just a personal preference -- on page
22 two of the -- no, I am sorry, it would be on page 74 of

1 the Board book, and it would be page 2 of the policy
2 itself. You have defined some terms, and I think the
3 definitions are really good. But is there any reason
4 why they cannot be in alphabetical order?

5 You start out with "immediate family members,"
6 and then you move to fraud, and then you move to waste,
7 and then you go up to abuse. Is there any reason why
8 they can't be alphabetical?

9 MR. FLAGG: I don't recall why they are in
10 this order. And, therefore, I am happy to make it
11 alphabetical.

12 MS. BROWNE: Thank you. My sense of --

13 CHAIRMAN MINOW: Order.

14 MS. BROWNE: -- sensibilities is greatly
15 relieved. Thank you.

16 CHAIRMAN MINOW: Well, that is excellent. And
17 I think the combination of this and the GAO report
18 evaluations, this is like being flossed. It is very
19 good. It is very good.

20 (Laughter.)

21 CHAIRMAN MINOW: It is a good thing. It is a
22 good thing.

1 I had a small question which is in the
2 definition section in the policy. This is on page two
3 of the policy, the definition of "immediate family
4 member." Having encountered this in some other Board
5 context, it should be clear, but it is not necessarily
6 clear that everybody listed there is currently a member
7 of the household. So, children, for example.

8 There is a question. Adult children who do
9 not live in the household, are they covered? And I
10 could not tell, from the language.

11 MR. FLAGG: Well, I mean, my sense is the
12 answer is they are covered. That is, if you had a
13 child that would --

14 FATHER PIUS: Does the very last clause cover
15 every single term that comes before it?

16 CHAIRMAN MINOW: Precisely. Does the last
17 clause modify all the prior terms, or is the last
18 clause only a modification --

19 FATHER PIUS: A catch-all.

20 CHAIRMAN MINOW: Right.

21 MR. FLAGG: Ah.

22 CHAIRMAN MINOW: Correct.

1 MR. FLAGG: Yes, okay. No, I -- let me think
2 about how to fix that. The intention, I believe, was
3 to include children at all times, because --

4 CHAIRMAN MINOW: Understood.

5 MR. FLAGG: -- if a transaction was going to
6 benefit a child financially, I think we would all
7 probably agree that --

8 CHAIRMAN MINOW: It is problematic.

9 MR. FLAGG: -- that is a problem, whether the
10 child still resides with you or not.

11 CHAIRMAN MINOW: Agreed. It is just
12 ambiguous, as written.

13 MR. KORRELL: It may be that if you just
14 change the word "other" to any --

15 MR. FLAGG: Yes, that would solve the problem.

16 CHAIRMAN MINOW: That would be very helpful.

17 That would -- wow, thank you, Harry.

18 MR. FLAGG: Okay. So we will --

19 CHAIRMAN MINOW: John?

20 MR. LEVI: I am looking at the Directors
21 section, page 77 of the book. And I want you to look
22 at the first sentence under Directors, and then square

1 it with the third sentence.

2 CHAIRMAN MINOW: So if the policy --

3 MR. LEVI: So any Director --

4 CHAIRMAN MINOW: What page in the --

5 MR. LEVI: Well, it is 77 in the book, so it

6 would be -- on the Conflicts of Interest Policy, it

7 would be the fifth page.

8 CHAIRMAN MINOW: Okay, thank you.

9 MR. LEVI: It says "Directors".

10 CHAIRMAN MINOW: Thank you.

11 MR. LEVI: So, "Any Director who has or
12 believes he/she has a conflict or potential conflict of
13 interest, or becomes aware -- shall promptly bring it
14 to the attention of the ethics officer, who makes a
15 determination." That is that sentence.

16 But then the third sentence, "Whenever a
17 Director has a conflict or potential conflict of
18 interest in a matter under the Board of Directors
19 consideration, the Director must fully disclose."

20 How are those two meant to work together? Or
21 do they not?

22 CHAIRMAN MINOW: That is a good --

1 MR. LEVI: I want it to be clear to directors
2 that they don't have to -- if they come to a Board
3 meeting and they think -- or a Committee meeting and
4 they think they have a conflict, but they haven't
5 reported it yet to an ethics officer, that shouldn't
6 delay their raising their hand and saying, "I think I
7 have a potential conflict."

8 Now, I think that is how we would act. But I
9 am not sure how well this is written, and it is s
10 little cumbersome. In terms of other not-for-profits
11 that I am on the board of, there is a more
12 streamlined --

13 MR. FLAGG: That was certainly the intent,
14 that if somebody has -- encounters a conflict situation
15 just during the course of time, that in advance of a
16 meeting they should bring it to the attention of the
17 ethics officer for a determination. But certainly, if
18 in real time they are at a meeting and they have any
19 question, they ought to recuse themselves.

20 MR. LEVI: That is my view.

21 CHAIRMAN MINOW: I think that is right, and I
22 think there could be some --

1 MR. LEVI: And I think that is what is
2 intended, but I think maybe it should be --

3 CHAIRMAN MINOW: I think there should be some
4 language there. Because it is also the case that in
5 some organizations disclosure doesn't lead to
6 non-participation.

7 MR. LEVI: Right.

8 CHAIRMAN MINOW: And so, if this is meant to
9 be that if it is a conflict, there is
10 non-participation, then maybe the way to put it before,
11 "Bring it to the attention of the ethics officer, who
12 will make a determination." Then, when you get to the
13 later sentence, "If it has been determined, then that
14 person will not participate."

15 And if we are at real time and there has not
16 yet been a determination, then it loops back to the
17 prior sentence, right? Something like that.

18 MR. FLAGG: Let me take -- I take your point.

19 Let me, before this becomes --

20 CHAIRMAN MINOW: Collective drafting, yes,
21 yes.

22 MR. FLAGG: Let me recirculate this again in

1 time for the Board meeting on Tuesday.

2 CHAIRMAN MINOW: Thank you.

3 MR. LEVI: I think not a big thing.

4 CHAIRMAN MINOW: Gloria.

5 MS. VALENCIA-WEBER: I have a question on page
6 75.

7 CHAIRMAN MINOW: So of the policy --

8 MS. VALENCIA-WEBER: Yes, it is on page 75 of
9 the policy.

10 CHAIRMAN MINOW: -- it is three.

11 MS. VALENCIA-WEBER: Now, on the previous
12 page, 74, you have "other business relationships and
13 dealings, where the conflict arises because of
14 financial or other interests."

15 MR. MADDOX: Can I just ask what page in the
16 policy?

17 CHAIRMAN MINOW: So on page three of the
18 policy, itself.

19 MS. VALENCIA-WEBER: Sorry. Yes, yes. I am
20 talking about page three and four.

21 MR. MADDOX: Thank you.

22 MS. VALENCIA-WEBER: So, in other business

1 relationships and dealings, we are concerned about
2 financial or other interests that might arise. Then,
3 if you move to the next category, the other
4 organizational relationships and dealings, I don't
5 quite understand what is the conflict there. It is not
6 express. Or maybe I am not reading it right.

7 MR. FLAGG: Let me -- the other business
8 relationships and dealing set of issues dealt with a
9 situation where somebody might have a financial
10 interest so that an issue before the LSC Board, for
11 example, would affect the financial interest that you
12 had in another organization.

13 The other organizational relationship and
14 dealing dealt with a situation where an issue came up
15 before the LSC Board where, as a result of your
16 employment or your service on another Board, you might
17 have an issue conflict, if you will, and where a policy
18 proposal or some advocacy position that LSC was going
19 to take somehow would -- you would have a conflict vis
20 a vis a position you had in another organization. Not
21 a financial conflict, but a relationship conflict with
22 respect to an issue.

1 And the two were lumped together at one point,
2 but apparently not altogether successfully. We
3 separated them to make clear that these were two
4 different sorts of conflicts that could arise. One I
5 would characterize as a business or financial conflict,
6 the other a policy or advocacy conflict, either one of
7 which could arise from a relationship with a third
8 party.

9 CHAIRMAN MINOW: Is that clear, Gloria? Does
10 that help you?

11 MS. VALENCIA-WEBER: Yes, I think I understand
12 it now.

13 CHAIRMAN MINOW: Good. Julie?

14 MS. REISKIN: Yes, I had a couple comments.
15 On "immediate family," it says "partner." But do we
16 need to say "domestic partner" or "civil union"?
17 Because every state has different -- I mean do we need
18 to somehow say that that is all-inclusive and
19 expansive? Because we want it to be expansive, right?

20 I don't know. That was just --

21 CHAIRMAN MINOW: Are you asking that also in
22 distinction of business partner, or --

1 MS. REISKIN: Yes. I mean, like, who --

2 CHAIRMAN MINOW: Right.

3 MS. REISKIN: Could someone -- and again, in,
4 like, a civil union state or a domestic partner --

5 CHAIRMAN MINOW: Sure, sure.

6 MS. REISKIN: -- it is not clear what that
7 means. So -- or just --

8 CHAIRMAN MINOW: Ron, will you work your
9 magic?

10 MR. FLAGG: We will take a look at it, sure.

11 MS. REISKIN: And then, I am not sure if this
12 is -- if my concern is matters involving grantees,
13 subgrantees, and applications, or influence peddling,
14 but I feel like it needs to be a little bit stronger,
15 that Board members shouldn't -- or no one, but I was
16 kind of thinking of this as a Board member -- shouldn't
17 use our -- I guess it would be influence peddling. It
18 is not just financial, it is other --

19 MR. FLAGG: Well, it would probably be
20 captured in the "other organizational relationships and
21 dealings" --

22 MS. REISKIN: Okay.

1 MR. FLAGG: -- section, as well, because that
2 is exactly what we were getting at in that paragraph,
3 that it did not have to just be financial, it could
4 be --

5 MS. REISKIN: I shouldn't go to Colorado Legal
6 Service and say, "Take my client over everyone else."

7 CHAIRMAN MINOW: That is a good point.

8 MR. FLAGG: Yes. I mean if there was an issue
9 that was before this Board which raised a question or
10 dealt with a question that another organization you
11 worked with --

12 CHAIRMAN MINOW: Right.

13 MR. FLAGG: -- or on whose Board you served
14 had a contrary position, and you, therefore, have a
15 conflict, then you can't exercise your duty to -- of
16 loyalty to LSC on that issue, because you have a
17 conflicting duty of loyalty with respect to another
18 organization, then for that issue you ought to recuse
19 yourself.

20 MS. REISKIN: I was thinking more of, like, as
21 a Board member, we shouldn't be telling the grantee
22 what to do, or, like, put -- like, using our influence

1 to -- again, like, I shouldn't go to my local Legal
2 Services and say, "Well, take my client over someone
3 else."

4 MR. FLAGG: Oh, oh, right --

5 MS. REISKIN: Like, they should be able to
6 jump the line, or something like that. That would be
7 really inappropriate. But I don't really see --

8 CHAIRMAN MINOW: Charles?

9 MR. KECKLER: Right. I mean I think -- and
10 you can comment if you think this is necessary. In
11 relation to that sort of scenario that you are raising,
12 Julie, I mean, it says that "soliciting a benefit in
13 exchange for using influence to advance the interests."

14 Should it not be "affect the interests," right?
15 Because if it is a threat, where I am going to sic LSC
16 on you, unless you do X, you know --

17 CHAIRMAN MINOW: Good catch. Good catch,
18 definitely.

19 MR. KECKLER: So maybe "affect," rather than
20 "advance".

21 MR. FLAGG: Where is the --

22 FATHER PIUS: The definition of "influence

1 peddling" --

2 CHAIRMAN MINOW: Under the definition --

3 MR. KECKLER: The definition of "influence
4 peddling".

5 MR. FLAGG: Oh, okay.

6 CHAIRMAN MINOW: Because it might not be for
7 the person.

8 MR. KECKLER: Right. It doesn't have a
9 direct --

10 MS. REISKIN: It might be just, like, "I want
11 you to do this, instead of that," or whatever.

12 MR. KECKLER: Yes, right.

13 CHAIRMAN MINOW: That is good. Julie, you
14 have more?

15 MS. REISKIN: No, thank you.

16 CHAIRMAN MINOW: Okay.

17 MR. KECKLER: Thanks, good catch.

18 CHAIRMAN MINOW: Any further comments,
19 questions?

20 (No response.)

21 CHAIRMAN MINOW: We will pursue this revision.

22 It is not the last possible moment. There could be

1 later revisions after we live with this policy. But it
2 is very good to have it updated.

3 All right? Everybody good? So we will look
4 forward to bringing the revised version to the full
5 Board. And I think everybody is on agreement, at least
6 philosophically, with where we are going.

7 FATHER PIUS: I am sorry, just a point of
8 order. Do you need to pass a motion to submit to the
9 Board?

10 CHAIRMAN MINOW: Thank you so much.

11 M O T I O N

12 CHAIRMAN MINOW: I would like to see how many
13 people would like to vote in favor of recommending this
14 to the Board.

15 MS. BROWNE: So moved, or --

16 CHAIRMAN MINOW: So moved? Second?

17 MS. REISKIN: Second.

18 CHAIRMAN MINOW: All in favor?

19 (Chorus of ayes.)

20 CHAIRMAN MINOW: Excellent.

21 MR. FLAGG: Thank you.

22 CHAIRMAN MINOW: Well done. Thank you. That

1 is very, very good.

2 So, we now turn to just the resolution. Well,
3 the resolution, we have just voted that implicitly,
4 right? So we are doing both the policy and the
5 resolution. Can we treat that as we voted for both?
6 Great.

7 CHAIRMAN MINOW: And as to any new business,
8 any other business, is there anyone who has any other
9 business?

10 (No response.)

11 CHAIRMAN MINOW: Any public comment?

12 MR. GREENFIELD: Hi, Martha. Chuck Greenfield
13 from NLADA.

14 In listening to the discussion about conflict
15 of interest, I am reminded of an internal ethics
16 opinion a few years ago within LSC that prevents
17 grantee employees from participating in visits by the
18 Office of Program Performance.

19 It used to be that grantee executive
20 directors, attorneys, litigation directors, et cetera,
21 would be part of visits to other programs.

22 CHAIRMAN MINOW: Sure.

1 MR. GREENFIELD: And they were used
2 quite -- when I was at OPP we used them, as well. And
3 we used quite --

4 CHAIRMAN MINOW: Peer review kind of thing.

5 MR. GREENFIELD: Peer review, and they were
6 quite successful. And it benefitted LSC in terms of
7 relationship with programs, and it benefitted the
8 directors in the program. Employees, as well, because
9 they would take back ideas to their own program. Many
10 times people would say, "I don't know how much help I
11 was to the program we were reviewing, but to my program
12 I got a lot of great ideas."

13 Well, there was an internal ethics opinion
14 that says they can't do that because of the concern
15 that they will become too friendly with members
16 of -- people at LSC and, therefore, be problem.

17 So I was just thinking about -- since this
18 does cover employees, I don't know if it is
19 specifically addressed, but I guess I would ask that
20 maybe Jim and Ron Flagg take a look at that issue
21 again.

22 And I do know, for example, that the Justice

1 Department Office of Violence Against Women uses
2 grantees --

3 CHAIRMAN MINOW: That is true.

4 MR. GREENFIELD: -- on their review panels. I
5 have talked to several of them, myself. And so, there
6 are other parts of the Federal Government that don't
7 see this as a potential ethical or conflict of interest
8 issue. I just ask that you take a look at that.

9 CHAIRMAN MINOW: Well, Chuck, thank you very
10 much for that. It is one of the many reasons we are so
11 lucky that you are here, because you have more
12 institutional memory on that than we do.

13 Jim?

14 MR. SANDMAN: Yes, this did come up just a
15 couple of years ago. I am familiar with the issue and
16 don't favor revising it. This is an issue of the
17 regulated supervising the regulated. That was the
18 concern that was expressed in the opinion.

19 We are continuing to do peer reviews. There
20 is a rich environment of people who are familiar with
21 legal services out there, but who don't work in
22 LSC-funded programs. And those people regularly

1 participate in our team visits. So we have the
2 perspective of experienced legal services providers
3 doing peer reviews, but don't have to use people who
4 are coming from LSC-funded programs to do it.

5 But the concern that was expressed in the
6 opinion was that, say, an executive director of an
7 LSC-funded program reviewing the practices of another
8 LSC-funded program might have a view of LSC policy,
9 regulations, whatever, that might not be as objective
10 as it would be, otherwise.

11 CHAIRMAN MINOW: Well, thank you, Jim. Chuck
12 was raising the question about the flow of information,
13 though, across the peers. And I take it that we have
14 other mechanisms that we are working on to promote that
15 kind of communication. So maybe in the past there
16 weren't those occasions, but now we are developing,
17 both with the website and other kinds of internal
18 communications, ways for executive directors to share
19 practices.

20 MR. SANDMAN: And we also have a device that
21 we use sometimes where we can match a mentor. So there
22 are other ways for people to get the benefit of

1 peer-to-peer learning. The concern that the opinion
2 addressed was the oversight function, and whether one
3 LSC-funded program should be given a role in overseeing
4 another LSC-funded program.

5 CHAIRMAN MINOW: I confess I have never
6 thought about it before, but I can see another problem,
7 which is the way that the Supreme Court -- often a
8 justice asks a question and it is not really to the
9 lawyer, it is to the other justices. There can be a
10 way in which this peer review participant could be
11 doing something that is not really about that program,
12 but could really be about their own program. And that
13 is a risk, so I can see that.

14 Was that ethics opinion OLA opinion, or was
15 it --

16 MR. SANDMAN: It was issued by the ethics
17 officer. It was --

18 CHAIRMAN MINOW: Ethics officer?

19 MR. SANDMAN: John Meyer issued the opinion --

20 CHAIRMAN MINOW: I see.

21 MR. SANDMAN: -- when he was the ethics
22 officer.

1 CHAIRMAN MINOW: I see, I see. Laurie?

2 MS. MIKVA: I understand everything President
3 Sandman was saying, but I also have a strong memory of
4 a very vibrant grantee employee talking about how there
5 is so much you can get from actually visiting the
6 offices. And isn't there a way that we can somehow
7 facilitate that? And --

8 CHAIRMAN MINOW: That is a good question.

9 MS. MIKVA: Realizing the limited resources,
10 but --

11 CHAIRMAN MINOW: It is a good question. And
12 that is something that I think is really good for Jim
13 to consider, but also, frankly, for our
14 soon-to-be-renamed performance committee, whose name I
15 am not sure I remember.

16 (Laughter.)

17 CHAIRMAN MINOW: That is the kind of thing
18 that we should actually be exploring. So --

19 MR. GREENFIELD: If I could just say one other
20 thing --

21 CHAIRMAN MINOW: Chuck?

22 MR. GREENFIELD: And I know Jim knows this,

1 and all of you probably know it, as well. But the LSC,
2 in these peer review visits, controls and makes the
3 final decision on the reports and the recommendations.

4 It actually comes from the LSC employees involved, as
5 well as being reviewed by Janet LaBella and others
6 within Office of Program Performance.

7 So, it is not as though the people being
8 regulated are actually doing the oversight
9 decision-making. They are part of it, they make part
10 of recommendations. I wouldn't say they don't make
11 recommendations; sure, they do. But, in terms of the
12 final product and what gets issued, that is actually an
13 LSC product. Thank you.

14 CHAIRMAN MINOW: Thank you. And thank you for
15 raising this question.

16 Any other public comment?

17 (No response.)

18 M O T I O N

19 CHAIRMAN MINOW: Then I will entertain a
20 motion to adjourn the Committee meeting.

21 MS. BROWNE: I will move that we adjourn.

22 MR. KECKLER: Second.

1 CHAIRMAN MINOW: All in favor.

2 (Chorus of ayes.)

3 CHAIRMAN MINOW: Thank you. Meeting is
4 adjourned. Thank you all.

5 (Whereupon, at 3:34 p.m., the Governance and
6 Performance Review Committee was adjourned.)

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