LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE GOVERNANCE
AND PERFORMANCE REVIEW COMMITTEE
OPEN SESSION

Monday, October 6, 2014
9:24 a.m.

Hilton Albany
40 Lodge Street
Albany, New York  12207

COMMITTEE MEMBERS PRESENT:
Martha L. Minow, Chairperson
Charles N.W. Keckler
Julie A. Reiskin
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:
Robert J. Grey Jr.
Harry J.F. Korrell, III
Victor B. Maddox
Laurie Mikva
Father Pius Pietrzyk, O.P.
Gloria Valencia-Weber
STAFF AND PUBLIC PRESENT:

James J. Sandman, President

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

Lynn Jennings, Vice President for Grants Management

Julie Kramer, Program Counsel, Office of Compliance and Enforcement

David L. Richardson, Comptroller and Treasurer, Office of Financial and Administrative Services

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

Janet LaBella, Director, Office of Program Performance

Lora Rath, Director, Office of Compliance and Enforcement

Jeff Schanz, Inspector General

John Seeba, Assistant Inspector General for Audit, Office of the Inspector General

Carl Rauscher, Office of Government Relations and Public Affairs

Wendy Rhein, Chief Development Officer

Bernie Brady, LSC Travel Coordinator

Wendy Long, Executive Assistant, Office of Government Relations and Public Affairs

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

C. Kenneth Perri, Executive Director, Legal Assistance of Western New York

Paul J. Lupia, Executive Director, Legal Aid Society of Mid-New York

Barbara Finkelstein, Executive Director, Legal Services of the Hudson Valley
Lillian M. Moy, Executive Director, Legal Aid Society of Northeastern New York

Robin C. Murphy, National Legal Aid and Defender Association (NLADA)

Lisa Wood, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
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PROCEEDINGS

(9:24 a.m.)

CHAIRMAN MINOW: The meeting of the Governance and Performance Review Committee is now in session. I wonder if anyone has any comments on the agenda -- I mean, on the approval of the agenda?

MOTION

MR. KECKLER: Move to approve the agenda.

CHAIRMAN MINOW: Second?

MS. REISKIN: Second.

CHAIRMAN MINOW: All in favor?

(A chorus of ayes.)

CHAIRMAN MINOW: Okay. Any comments on the minutes?

MOTION

MS. REISKIN: Move to approve.

CHAIRMAN MINOW: Second?

MR. KECKLER: Second.

CHAIRMAN MINOW: All in favor?

(A chorus of ayes.)

CHAIRMAN MINOW: Great. So we turn now to Carol Bergman, who will tell us officially about the
status of the GAO recommendations.

MS. BERGMAN: Thank you very much, Madam Chair. I guess we should have brought champagne; it's a little early in the morning.

On page 145, for those of you who actually have a hard copy of the Board book, there's a screenshot of the website that's showing where GAO has closed out the final recommendation and all of the recommendations on the report.

(Applause)

MS. BERGMAN: I think one of the really good parts is that we were really able to negotiate the closure of this last recommendation based on our plan and not the actual completion of the annual performance management process.

What we did was present to them the date of the plan, when it was actually implemented, and a timeline for implementing the new system, and the employee training, and the dates, and the specifics of all the employee training on the new performance management process, and OHR's tracking mechanism to ensure the process would be completed for all
employees.

So I think, based on our track record with them, they were willing to close it out based on that as opposed to actually seeing it through for a full year through of completion.

So I really want to say for the record that this was really due to the extraordinary cooperation among many senior staff, but specifically Traci, Richard, and Lynn, and Treefa just played an incredible role, her diligence in coordinating the team effort to really make this happen.

CHAIRMAN MINOW: Well, I just want to give my personal commendations to that entire group, and indeed, to the entire organization. To take us from a daunting list to great success and closure is one thing. But to put in place processes that actually, in my view, mean we will never again have that level of critique, that's the real accomplishment. And it shows that the organization is strong. And while it's not champagne, I do have something.

MS. BERGMAN: Uh-oh. Oh, my goodness. That's very sweet. It is the Statue of Liberty chocolates,
sweet taste of New York. So we'll bring it back to the staff. Thank you.

CHAIRMAN MINOW: So there's a New York comment in it. And there's no reference with the use of the word "liberty" to being free of GAO, by any means. It's only --

(Laughter.)

MS. BERGMAN: Well, that's because you haven't heard the next part of our report.

CHAIRMAN MINOW: It's only meant to say, we are proud of our role in America, and thank you and the whole team for their great work on this.

MS. BERGMAN: Thank you. That's very generous.

And just when we thought we were done, we got a call from GAO last week. It's a little bit different. They are conducting a study of all federal programs that target low-income individuals, families, and communities.

It's an inventory of 80 such federal programs across 13 different agencies, and includes LSC. It's a request by Senators Sessions and Coburn, and it's a
followup to the 2011 CRS report on federal benefits to low-income communities.

So this is not a traditional formal investigation, and it's certainly not targeting LSC. It's really an inquiry that's being done through email; they're not even doing a formal entrance conference. And it's on a fast track. I'm sorry?

MS. REISKIN: What's CRS?

MS. BERGMAN: Oh, Congressional Research Service. Sorry. Yes. The world of acronyms that Jim is always trying to get us to move past. It's essentially the Library of Congress. It's the part of it that works directly with Congress and produces reports and does research at their request.

So we've taken a look at this, and we have just a series of questions that's really just trying to confirm the data regarding how many people are served and the income requirements, things like that.

And we are listed in the original report; actually, LSC is identified as a social service agency. And we will take the opportunity in our cover letter responding to clarify the LSC Act and in fact what LSC
is in business to do, that we are not in business
either to target poverty, although we serve low-income
people, and to be very clear and differentiate what our
role is.

CHAIRMAN MINOW: Is it possible to use that as
an occasion to advance our number one strategic goal,
which is to be a voice for low-income people's rights,
and in particular, here to incorporate the data and
studies that are coming out in places like New York
about the benefit of one dollar of legal services in
terms of return to the states and their own economies,
as well as the value in the enforcement of the rights?

It just seems to me that may not be within the
question that the GAO has asked. But it is absolutely
our understanding of where we fit in the larger picture
of the services to low-income people.

MS. BERGMAN: Yes. It's certainly not
covered, Martha, by any of the questions that they are
asking. But we could certainly make a reference to
that in our cover note, in describing the parameters of
what our work looks like.

CHAIRMAN MINOW: Yes, Julie?
MS. REISKIN: Do you have any idea what they're looking -- is this about how all of the programs have different income and asset criteria? Is it how they don't work together? Do you know what they're looking to get out of this?

I'm thrilled that someone is looking at all this, and I'm just curious as to if you have any idea what they're looking at or where it's going to go or what the timeline is, any of those.

MS. BERGMAN: I would say that on its face, it is strictly an analysis of how the federal government is spending the funding that is directed at alleviating poverty, and how effective those expenditures are.

The timeline is very quick. They're hoping to have a draft report in February and a final report in May.

CHAIRMAN MINOW: All right. So that sounds great.

I think, then, we're ready to go to Board and Committee evaluations. I take it at this point we're simply looking at the forms?

MS. BERGMAN: Yes. I just wanted to mention,
the forms are in your book that are a replica of last
year. We had revised them last year with significant
input, and folks for the most part seemed pretty
comfortable with them.

The timeline is that we intend to send an
e-mail with these evaluation forms to folks by the end
of October, with the goal of having everybody submit
them by December 15th. That's so that we can collate
and be able to provide all the results in time for the
January Board meeting.

We are also working to see if we can update
the way we've done this online. I know it wasn't
accessible easily for everybody last time around, and
some people ended up sending us hard copies. We're
seeing if we can do this a little differently so that
everybody can do them online.

We changed it last year to simplify it a
little bit so there were only two forms, not three.
You have an evaluation of your service on the Board,
which includes a self-evaluation, and then you do an
evaluation for your service on every Committee of which
you are a member. And this also includes the nonvoting
members of the Board.

But if people have any comments, since we're not going to finalize this till the end of October, obviously this is a really good forum, or to let me know in the next week or two if there are any tweaks or changes before we send everything out to people.

CHAIRMAN MINOW: And people can do it online as well. Is that right?

MS. BERGMAN: Oh, yes. That's what I said. We did do it online last year, but not everybody could do it easily.

CHAIRMAN MINOW: Yes. Right.

MS. BERGMAN: So that's why we're trying to update it, and we'll sent it out with all the information by the end of October. Absolutely.

CHAIRMAN MINOW: Great. Julie?

MS. REISKIN: Yes. Just two comments. The first question on both the Board and the Committee form is really two questions. "The Board has a full and common understanding of LSC mission, procedures, and the roles and responsibilities of the Board." That's one question, or one rating.
And then, "Board members are involved and interested in the Board work" -- I just think those are two different questions. Theoretically, and this isn't the case here, but theoretically, the Board could have an understanding but not be involved and interested. And the Committee question is the same. It's also two questions.

And then on the Committee question, number 3, you have "Strongly agree" and "Strongly disagree." There should be an N/A, a not applicable option, because what if a committee hasn't had something brought to it?

MS. BERGMAN: Yes. Thank you, Julie. Two things I would just say in response. I know that John wanted very much to keep these to ten questions. So we created a couple of compound questions in order to do that, the theory being that a lot of the feedback we got from folks is that there were too many questions. The notion is, especially in the email version, there's comments, and that you can take as much space as you want to comment on the different aspects of the question. But obviously, I defer to the
Board in terms of whatever is going to be the most
effective way for folks to do --

MS. REISKIN: No. We'll say there's too few, and next year we'll say there's too many again.

MS. BERGMAN: -- I'm happy to accommodate.

CHAIRMAN MINOW: I think it's a good response. And Julie has a very fair point, but for now, could we handle it in the form of comments, that if you feel that you have one rating with regard to one part of the question and another to another, then use a comment to say so. Does that make sense?

MS. REISKIN: Yes. And like I said, it's not really relevant now.

CHAIRMAN MINOW: Sure.

MS. REISKIN: It was just more reading it, editorial. But that's fine.

CHAIRMAN MINOW: No. It's a good point.

MR. LEVI: My point on this was that with Carol's referring to it is that this Board observes the best practice of annually filling these out, and you don't want to drown people who are serving by sending them so much stuff that they feel burdened by it. So
there is that sort of balance.

CHAIRMAN MINOW: Balance. And we do hope to have them all in, certainly, by January 1st if not before.

MS. BERGMAN: Yes.

CHAIRMAN MINOW: Father Pius?

FATHER PIUS: I think these are very good. Just one question. Just a thought. For the Committee evaluations, there's no specific reference in any of those to the strategic goals of the Corporation. There is a mention of, "Has made significant progress on long-term strategic issues related to its goals and purpose." But whether there should be a more explicit reference to the Committee's work in relationship to the overall strategic planning of the Board?

CHAIRMAN MINOW: That's a very good point. Very good point.

Carole, could we add that?

MS. BERGMAN: Yes. I'd be happy to find a way to incorporate that. Great.

CHAIRMAN MINOW: All right. So this is your
homework, everybody. You'll get an email, and I look forward to being able to say that we have 100 percent returns by January.

So thank you, Carol.

MS. BERGMAN: You're welcome.

CHAIRMAN MINOW: I think that that's it for Carol. And now we turn to the research agenda, and I turn to Jim.

PRESIDENT SANDMAN: Thank you, Martha.

Our consultants are working on the development of an online toolkit to guide grantees in their collection and use of outcomes data. The toolkit will be a compilation of outcomes measurement practices currently in use by other funders and by individual grantees. It will offer a menu of options and recommendations for best practices.

But we'll leave it to our grantees to choose which of the tools we offer or one of their own creation might best serve their purposes, depending on what their circumstances are and the nature of their practice.

We've identified a test group for the toolkit,
and expect to have something to them to consider by the end of this month. And we'll be making a presentation on the toolkit at the NLADA meeting in Washington, the conference in November.

So we expect to have something, at least a starter version. This is something that will evolve over time. And we expect to get input on the site that we create where grantees can share experiences and recommendations -- what they've found works best for them, what didn't work well for them -- with the notion that it will create what our consultants call a "community of learning" where grantees can learn from each other's experiences.

CHAIRMAN MINOW: Jim, that sounds great. I wondered, as that evolves, if we could have anything written down about it because I think that the growing research capacity with the grants and so forth raises possibilities of actually thinking about, whether by scale or geography, grouping some of the grantees together so that they can be mindful, that they may be choosing some tools but not another.

And yet if a somewhat comparable group is
doing another, it would be great to be able to have them in conversation or be able to compare the results. Just looking ahead to the possibility of evaluating rather than simply self-report, here's what we find helpful. It might be helpful to lay in the groundwork of that nature.

PRESIDENT SANDMAN: Well, we can do that, and certainly that's an excellent suggestion.

On a related point, we've gotten some indications that some of the grantees in larger states would like to adopt the same approach so that they can share their information with their statewide IOLTA funder -- California, for example, in particular, so that each isn't going in its own direction.

CHAIRMAN MINOW: Sure. Exactly.

PRESIDENT SANDMAN: They can have comparable numbers that they're using, and there would be a lot of efficiencies in that. But that's more likely, I think, to work on a state level than a regional level.

CHAIRMAN MINOW: That makes sense.

Julie?

MS. REISKIN: This is very exciting, and I'm
really glad you're using the term "communities of learning" because if we really want to get outcome measures, we've got to have that attitude.

Where we're going to be a little different from other funders is that we're trying to promote best practices in a community of learning, and we're also a regulator. So have you given thought to how that's going to balance? Because if we're going to have a community of learning, it has to be a safe space for grantees to really be able to talk about what doesn't work as well as what does.

And again, I understand the need to regulate and be very conscious of costs. But I would hate to have some kind of discussion going on, and that results then in a questioned cost, and then all of a sudden there's some investigation. And that will just put a chill on it.

But I also don't want to say, oh, we're not going to investigate. I understand we've got to do both. But we've got to be very strategic about this so that this remains a very safe space and people can really be open about that.
I'm just wondering if you could speak to that and how that's happening.

PRESIDENT SANDMAN: Well, we're trying to pursue that objective through the flexibility that we're giving to grantees to choose their own outcomes measurement tool as opposed to mandating a one-size-fits-all for everybody.

So just the fact that we're giving that freedom of choice I think obviates what otherwise might be regulatory concerns. What we're telling them is, you have to be measuring outcomes. You choose how.

If they don't do it at all, that's going to be a regulatory problem. If they do it and they find out that it's not yielding helpful results or there are problems with it, there isn't going to be anything about our regulatory requirement that's going to put them at risk because of that experience.

So we will definitely be monitoring the situation, and if it develops that a grantee is using a system badly or using a system that isn't producing helpful information for them, we'll follow up on that.

But that will be a discussion and not in the nature of
an enforcement proceeding.

CHAIRMAN MINOW: Well, Jim, I'm sure you'll do this. But Julie's committee makes me think this is the kind of moment where having even a different color paper or background in the message -- something that says, this is not coming to you from OCE. This is coming to you from the communities of learning initiative.

You can satisfy the requirement of outcome measurement in any of the following ways, and we invite you to join with us and with others in sorting it out. Something that just screams, this is not going to get you in trouble.

PRESIDENT SANDMAN: Definitely we can do that. But I learned early on that one guaranteed laugh line when I'm speaking to grantees is, I'm from LSC and I'm here to help.

(Laughter.)

MS. REISKIN: Just a followup. I appreciate what you're saying. I guess I'm thinking it might be that they get helpful information. And I'm thinking of just an example of, we put into place an outcome
measure, and one of the things we learned in addition to outcomes is that some of our staff weren't tracking their time properly. And we didn't know that until we put this outcome measure in place and looked at something a different way, and we're going to make a change because of that.

I want to make sure that if they're then sharing that, that we're not going to then come back and collect on them because if we want people to really be transparent and change and grow, they need to not be incented to hide.

And I know that's probably not a terribly popular thing to say, and that's something that's been talked about with funders. Private foundations have a lot more flexibility.

But I know that that's the move that the more progressive foundations are taking, is, we want to make people free and open and safe to really admit mistakes and learn from them, not just to say, oh, it's a free-for-all, but to have that true culture of learning.

CHAIRMAN MINOW: I think it's a helpful
suggestion, Julie. It is complicated because, as you know, we have a dual role. One possibility to explore is to actually create a sufficient kind of infrastructure, web-based community, so that people who are engaging in this activity can be in conversation with each other and not feel it is simply with us.

MR. LEVI: Well, I have a different comment. It's somewhat related, Martha, but I would like to have -- and I'm not sure whether it's a Committee call or a Board call, but I think it's appropriate, in light of the fact that NLADA is going to hear about this so our grantees are going to hear about this, before apparently our next Board meeting, when we might hear.

I want us to hear the presentation before NLADA does, I think just to put all the Board in position so that if they get questions or whatever, they know what is out there. And I don't know whether it's your Committee having a meeting or whether it's the Board having a call. And you can suggest to the Board that you would like us to do that.

CHAIRMAN MINOW: Right.

MR. LEVI: But somehow that should happen.
And it can happen two days before NLADA, as far as I'm concerned, not to push --

CHAIRMAN MINOW: Thank you, John.

Jim, why don't we just confer about the best way to do that.

PRESIDENT SANDMAN: We'll do that.

MR. LEVI: And then I think you'll be in a better position if your grantee asks you what the heck is going on.

CHAIRMAN MINOW: Do we have a further report on research agenda, or you're done?

PRESIDENT SANDMAN: I do. We have received another grant, good news, a 1.2 million grant from the Margaret A. Cargill Foundation. This is payable over two years. We've already received the first payment of $800,000.

The purpose of the grant is for LSC to develop a legal services response plan and delivery system following disasters in the Midwest. The foundation has identified ten Midwestern states particularly prone to disasters, particularly tornadoes and flooding, that they would like us to choose two states within that
group to develop coordinated disaster response plans that include the delivery of legal services.

We plan to do this by issuing two different subgrants in two separate states. We put out a request for applications on September 2nd, and responses are due on October 15th. So we'll see what kind of response we get. And the work will be done and money will really be flowing to our grantees.

We got this grant because someone from the Margaret Cargill Foundation attended a conference where John Eidleman of LSC was speaking about our role in providing legal services following disasters, and she was very intrigued by the concept and followed up with us.

So this was something where the funder came to us asking us to submit a proposal, and I think it's evidence of the leadership position that LSC has in the delivery of legal services following disasters.

The idea here is that the systems that our subgrantees develop will be integrated, coordinated systems involving relationships with FEMA, with the American Red Cross, with the American Bar Association,
others who are providing onsite disaster assistance, to
help educate them about how to identify the need for
legal aid services, what legal aid providers can do.

CHAIRMAN MINOW: Well, this is of course a
really wonderful development. And I wonder if some
time in the coming months Carl or someone on the team
could actually do a piece for our website, but also
more generally, about the role of legal services in
disasters, and even do a look-back from Katrina and
from the Sandy disaster, and Martha Bergmark's own
work, she's so well-situated since she was involved in
a lot of that.

So it would be something to highlight in the
going-forward public communications about the role of
legal services. I don't think it's what people usually
think about when they think about disaster relief, and
yet our grantees have really played a significant role.
And frankly, because of the labyrinthian nature of FEMA
and other kinds of emergency disaster relief, having a
lawyer turns out to be very, very helpful. Julie?

MS. REISKIN: I just wanted to illustrate that
with something that I've been dealing with in the past
couple weeks. And this is why legal services is so important, is because a lot of these agencies do not understand due process.

You know the FEMA trailers that people can get. Well, apparently there's some clause somewhere, or at least this is what FEMA leaders say, that you can evict someone out of a trailer with a one-day notice. I have an elderly disabled woman who's had that threat. They then said that she needed to sign blanket releases to a number of different -- kind of to anyone anywhere for their case managers. And when I asked what the statutory authority was, they responded by saying they were closing her case. And that's just one person from the Boulder floods.

And I'd be really interested to see -- and I hope that some of the proposals will cover integrating due process, having lawyers -- because of course I don't have any authority to say to someone, you need to do this -- but having lawyers be able to say to all of these other agencies -- because it's FEMA and then they have all these subcontractors, and it's hard to track who's actually responsible or track the money; they
need an IG or someone to do that -- but to have
something about due process really integrated. I'll be
really interested; I hope we get something like that.

CHAIRMAN MINOW: Jim, I wonder if there's some
way we could get some social scientist to do some
evaluation as these efforts go forward.

PRESIDENT SANDMAN: I think that may be
something that we could talk to the Margaret Cargill
Foundation about funding, as followup to see what comes
of these programs.

CHAIRMAN MINOW: Because if they're setting up
the programs, then actually being able to have that
going forward would be very helpful.

PRESIDENT SANDMAN: Unfortunately, we'll
probably need a disaster to test them.

CHAIRMAN MINOW: Understood. Unfortunately,
we probably will get one. It is interesting to me to
see the rise, actually, in colleges and universities of
disaster relief as a major, as a concentration.

This is not going to be fewer. There are
going to be more going forward because of the changing
weather patterns, because of the burdens on
infrastructure. That's what people are predicting.

Gloria?

PROFESSOR VALENCIA-WEBER: Yes. There are some law reviews that discuss and evaluate, in descriptive terms and in some places better terms, what happened in the aftermath of Katrina, and now the BP ones are emerging. But Katrina particularly produced some.

I haven't looked at the social science journals to see if any of them did it. But what's coming out, and this reflects the experience we had in New Mexico, you may recall that in Katrina, first effort was whatever went wrong in New Orleans, and then people were evacuated to other places, including Houston.

And then another big storm was coming in, so then you had to evacuate people. And so there was like a third level of disaster relief in which I know we received about 15,000 people from Houston in Albuquerque.

Fortunately, at that time we had a professionally trained disaster planning person in city
government and county government. And they all looked at what went wrong in New Orleans, what went wrong in Houston, so that they day they arrive, they are pretty much taken very efficiently to a fully operating all-service center at the convention center, so everything from immediate clothing to whatever was needed.

But you had a full panoply of medical services, housing, immediate checks. And before this arrival, the law school and New Mexico Bar had been asked to provide lawyers for the legal part. And these are people who are needing to get documents that have been lost or whoever, or whatever it is they need to do to move their lives on.

And this fully integrated process went so much better. They were out of the convention center within a day and a half or two because housing had already been arranged. And you didn't have people with the bad things you saw on TV.

CHAIRMAN MINOW: That's great.

PROFESSOR VALENCIA-WEBER: So I think if you looked at what happened at Katrina at the second and
third tier rescue efforts and how the insightful ones
on the third tier looked at what had gone wrong
previously, you see some very fine examples. And I
don't think Albuquerque was the only one.

CHAIRMAN MINOW: I wonder whether a future
session of the Delivery of Legal Services Committee
could turn to disaster relief. There's a wonderful
book called "Thinking in an Emergency" by Elaine Scarry
which could be summarized in the following sentence:
You can't. You can't think in an emergency, so you
have to think in advance. (Laughs.) It's a short book.

But I do think that what Gloria is saying
about the integration of the legal elements is part of
what thinking in advance does require. And it's
wonderful to see our grantees really at the forefront
of this, and lessons learned can only help the next
time.

Well, that's great. I think that that closes
the discussion of the research agenda. I would only
comment that following our 40th panel discussions, I've
now been approached by several chief justices of state
courts saying, hey, you said that the academics could
help us study legal services. Do you think that you would? So I'm exploring that informally, and will share whatever I discover or we create in the academic world on that score.

As to other business, I just simply want to raise that we will be starting in the next calendar year, 2015, the performance review function again of this Committee, and look forward to working with Jim and Jeff on their own self-evaluations. And Jim, if you have any reviews of senior people that you want to tell us about, that will be just great.

Is there any other other business? Other other business, how's that?

(No response.)

CHAIRMAN MINOW: No? Public comment?
(No response.)
CHAIRMAN MINOW: Okay. Consider a motion to adjourn.

MOTION

MR. KECKLER: So moved.

MS. REISKIN: Second.

CHAIRMAN MINOW: All in favor?
(A chorus of ayes.)

CHAIRMAN MINOW: Thank you.

(Whereupon, at 9:55 a.m., the Committee was adjourned.)

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