

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE GOVERNANCE AND
PERFORMANCE REVIEW COMMITTEE

OPEN SESSION

Sunday, April 6, 2014

2:02 p.m.

Legal Services Corporation
3333 K Street, N.W., 3rd Floor
F. William McCalpin Conference Center
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:

Martha L. Minow, Chairperson

Sharon L. Browne

Charles N.W. Keckler

Julie A. Reiskin

John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Robert J. Grey Jr.

Father Pius Pietrzyk, O.P.

Gloria Valencia-Weber

STAFF AND PUBLIC PRESENT:

James J. Sandman, President

Richard L. Sloane, Special Assistant to the President

Ronald S. Flagg, Vice President for Legal Affairs,

General Counsel, and Corporate Secretary

Katherine Ward, Executive Assistant, Office of Legal Affairs

Atitaya Rok, Staff Attorney, Office of Legal Affairs

Carol A. Bergman, Director, Office of Government

Relations and Public Affairs

Treefa Aziz, Government Affairs Representative,

Office of Government Relations and Public Affairs

Wendy Long, Office of Government Relations and Public Affairs

Eric Jones, Office of Information Technology

LaVon Smith, Office of Information Technology

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

Frank B. Strickland, Non-Director Member,

Institutional Advancement Committee

Allan J. Tanenbaum, Non-Director Member, Finance

Committee (General Counsel, Equicorp Partners)

Don Saunders, National Legal Aid and Defenders

Association (NLADA)

Robin C. Murphy, NLADA

Terry Brooks, American Bar Association Standing

Committee on Legal Aid and Indigent Defendants (SCLAID)

Dominique Martin, Law99.com

Mann Drona, Web Content Manager

C O N T E N T S

OPEN SESSION	PAGE
1. Approval of agenda	4
2. Approval of minutes of the Committee's meeting of January 24, 2014	4
3. Report on progress in implementing GAO recommendations	5
\$ Presentation by Carol Bergman, Director of Government Relations & Public Affairs	
4. Report on Public Welfare Foundation grant and LSC research agenda	15
\$ Presentation by Jim Sandman, President	
5. Report on evaluation of LSC Comptroller, Vice President for Grants Management, and Vice President for Legal Affairs	26
\$ Presentation by Jim Sandman, President	
6. Consider and act on LSC Non-Discrimination and Anti-Harassment Policy	32
\$ Presentation by Ron Flagg, General Counsel	
7. Consider and act on other business	52
8. Public comment	52
9. Consider and act on motion to adjourn meeting	52

Motions: Pages 4 and 52

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

2 (2:02 p.m.)

3 CHAIRMAN MINOW: Hello, everybody. I'd like
4 to call to order the meeting of the Governance and
5 Performance Committee. And I think we have a quorum,
6 and so we're all here. Thank you all for being here.

7 We have a full agenda, and I would first like
8 to see if anyone's willing to approve the agenda.

9 M O T I O N

10 MS. REISKIN: So moved.

11 MR. KECKLER: Second.

12 CHAIRMAN MINOW: Great. Thank you. And
13 approve the minutes, or anyone have any changes on the
14 minutes?

15 (No response.)

16 CHAIRMAN MINOW: No? So let's deem them
17 approved. Wonderful.

18 So in the hard copy, it's page 8. Who's
19 online and can tell me what page it is on the online
20 version? Anybody online, have a page number?

21 (No response.)

22 CHAIRMAN MINOW: No? All right. Well, in the

1 hard copy it's page 8. We're going to turn to a report
2 on progress in implementing the GAO recommendations.
3 And we're delighted to be joined by our trusty Carol
4 Bergman, our guide to this fascinating process. So
5 Carol, update?

6 MS. BERGMAN: Thank you very much, Madam
7 Chair. We are getting there. That's the good news.
8 Since the last Board meeting in January, GAO has closed
9 out two additional recommendations, recommendation 5,
10 on improving grantee risk assessment, and
11 recommendation 11, on the strategic human capital plan.

12 We had put in a memo requesting closeout, and they
13 were both officially closed out on March 4th.

14 So we have three open recommendations at this
15 point, two of which deal with performance management.
16 It's recommendation 9 and 10. So 9 is LSC performance
17 measures, and recommendation 10 is the periodic
18 assessment of performance measures.

19 Essentially, GAO has determined that LSC has
20 taken substantial actions to date regarding both of
21 these, and key is the implementation of the procedures
22 that LSC has developed. We are required to complete

1 copies of the first quarterly assessments of the 2014
2 office performance measures to close out those
3 recommendations.

4 The plan is that every department should
5 complete these assessments by the end of April. And we
6 then intend to submit a request to close out to GAO at
7 that time, and we fully anticipate that that will be
8 sufficient for both of those recommendations going
9 forward, given all of our conversations.

10 So this is all tied to departmental goals and
11 a quarterly review chart of everything that has moved
12 forward each quarter that we will be doing. And so
13 we've been in touch with GAO, and all should go well.

14 The remaining recommendation is number 12,
15 which is employee performance management --

16 CHAIRMAN MINOW: Hold on one second, Carol.
17 Wait.

18 MS. BERGMAN: Yes?

19 CHAIRMAN MINOW: We have a question from
20 Julie.

21 MS. BERGMAN: Sorry.

22 MS. REISKIN: Sorry. I just had a quick

1 question about this particular one.

2 MS. BERGMAN: Sure.

3 MS. REISKIN: Does every employee have a
4 performance plan or just someone that maybe isn't
5 meeting their goal?

6 MS. BERGMAN: Okay. These are two different
7 things. That's what we get to in recommendation 12.

8 MS. REISKIN: Oh, sorry.

9 MS. BERGMAN: Nine and 10 have to do with the
10 department performance goals, and that's what's being
11 measured in the quarterly review process. And that we
12 will be submitting for closeout. So your question
13 really goes to --

14 CHAIRMAN MINOW: To 12.

15 MS. BERGMAN: -- to 12, which is the final
16 one.

17 CHAIRMAN MINOW: No, that's great. We'll hold
18 off for that.

19 Anyone have questions on 9 and 10? I have
20 one, which is, are these quarterly assessments now
21 something that we are expected to do going forward?

22 MS. BERGMAN: Yes.

1 CHAIRMAN MINOW: And so we will set up the
2 process and do that going forward?

3 MS. BERGMAN: Yes. And in fact, the
4 spreadsheet anticipates that. So the spreadsheet that
5 each department director is completing indicates what
6 of those goals have been met according to the metrics
7 that were established when the initial performance plan
8 for the department was created and what you anticipate
9 being able to implement in the next quarter going
10 forward, so that that will be done on a quarterly
11 basis.

12 CHAIRMAN MINOW: Wonderful. Great.

13 MR. LEVI: Is the quarterly something that
14 they suggested to us, or we suggested to them, or both?

15 MS. BERGMAN: Well, what their recommendations
16 actually say, John, is to develop and implement
17 procedures to link performance measures to specific
18 offices and their core functions. Okay? We've come up
19 with a plan that establishes this on a quarterly basis.

20 MR. LEVI: Thank you.

21 CHAIRMAN MINOW: So do you want to proceed to
22 12?

1 MS. BERGMAN: Yes, unless there are any other
2 questions on 9 and 10. Please, Charles?

3 MR. KECKLER: Just a quick question on 10. So
4 we talked a little bit about this at the last meeting,
5 but as we're submitting it, what's the cycle, then, for
6 reassessing the performance measures?

7 MS. BERGMAN: Well, remember, these are the
8 department performance measures.

9 MR. KECKLER: Right. Yes.

10 MS. BERGMAN: So these will be done every
11 quarter. Okay? So in other words, each department
12 head will meet with Jim and Richard to go over the
13 extent to which you've met those performance goals for
14 the department on a quarterly basis.

15 MR. KECKLER: So that 10 is also on a
16 quarterly basis?

17 MS. BERGMAN: Correct. They're really
18 related. They're different aspects of the same
19 recommendation.

20 PRESIDENT SANDMAN: Charles, we will be
21 revisiting the performance goals annually. So come
22 November/December, we'll be setting new performance

1 goals for 2015.

2 MR. KECKLER: Okay. Good. Thank you.

3 MR. LEVI: I take it this is like a quarterly
4 report on how we're doing on our --

5 MS. BERGMAN: Yes.

6 CHAIRMAN MINOW: So that process of quarterly
7 reporting will continue, but the content of the goals
8 will change?

9 MS. BERGMAN: Exactly.

10 CHAIRMAN MINOW: Okay. Great. Any other
11 questions on 9 or 10? Going. Going.

12 (No response.)

13 CHAIRMAN MINOW: All right. Twelve.

14 MS. BERGMAN: Moving on to 12. So 12 is
15 employee performance measures. The actual
16 recommendation says to develop and implement a
17 mechanism to ensure that all LSC staff receive annual
18 performance assessments. Okay?

19 So we have now finalized an employee
20 performance management system that replaces the one
21 that's described in the LSC employee handbook, and all
22 staff and managers have been trained on the new

1 employee evaluation system.

2 So currently, all directors are in the process
3 of drafting individual performance plans that are tied
4 to the department plans, and these are supposed to be
5 completed by mid to late April. And the plan going
6 forward will include a six-month check-in between
7 employees and directors, but this year it will be a
8 three-month check-in, given how late in the year we're
9 establishing this.

10 So LSC plans to discuss the new performance
11 management system and the steps going forward with GAO
12 because, obviously, what we'd like to do is find a way
13 to close this out within 2014.

14 So we want to wait until we have submitted
15 everything for 9 and 10, and then going forward on 12,
16 once all of the employee performance plans have been
17 approved by everybody across the board and we're going
18 forward, then we'll plan to talk with GAO about what's
19 the best way to submit materials indicating what we're
20 doing, how it's moving forward, and what they're going
21 to require to close out that recommendation.

22 CHAIRMAN MINOW: And again, it's only the plan

1 that's required. It's not demonstration of
2 implementation?

3 MS. BERGMAN: Well, no.

4 CHAIRMAN MINOW: No?

5 MS. BERGMAN: They are very big on
6 implementation. The question is how that will be
7 defined. What I would anticipate is that we will make
8 at least a sampling of the employee performance plans
9 available, but that's very different than the actual
10 evaluations of employees.

11 They're going to want to know that that's
12 happening. But I think that's the discussion about
13 what that implementation looks like.

14 PRESIDENT SANDMAN: Martha, we will try to
15 make an analogy to the approach that they've taken with
16 regard to recommendations 9 and 10, where one-quarter
17 of implementation, they have told us, will be
18 sufficient to demonstrate that we're on track.

19 And when we can document that, they have said
20 that they'll be inclined to close the recommendation
21 out. The hope is that once we can show that we have
22 taken the first step in implementation of our

1 individual employee performance management system, that
2 that too must be sufficient for them to close out. But
3 we have not had that discussion at that level of detail
4 yet.

5 CHAIRMAN MINOW: Correct. I see. Sharon?

6 MS. BROWNE: You mentioned on the three
7 remaining items that are outstanding that you
8 anticipate the necessary information by mid to late
9 April. Do you know if everybody's on track to get that
10 done by mid April to late April?

11 MS. BERGMAN: Well, my understanding is that
12 every department with regard to 9 and 10 is already on
13 the calendar with Jim to discuss their quarterly
14 performance goals, so that everything is supposed to be
15 submitted next week in advance of those meetings.

16 I know that all employee performance plans are
17 due by directors to H.R. by April 9th, I believe. So
18 my understanding is that everything is on track to move
19 that forward. I think everybody -- this has been a
20 huge collaborative effort within the organization. I
21 think everybody appreciates the seriousness of this,
22 and my understanding is that everything is moving

1 forward.

2 CHAIRMAN MINOW: Thank you. Any other
3 questions on 12? Gloria?

4 PROFESSOR VALENCIA-WEBER: This may be a
5 question for Jim as well. I just want to know how the
6 individual performance plans connect to our
7 unionization process.

8 PRESIDENT SANDMAN: This overall performance
9 assessment process has been discussed with and reviewed
10 by the union. So it's been discussed with them.

11 CHAIRMAN MINOW: Very good. Well, Carol, you
12 have managed this process very well. And I see the
13 light at the end of the tunnel, and it's not New
14 Jersey. So that's really great.

15 (Laughter.)

16 MS. BERGMAN: Thank you. But I really want to
17 say for the record that this really has been a
18 collaboration. It's a huge team effort, both with my
19 staff and with H.R. and the chief of staff. This could
20 not have been done without other people really playing
21 a huge role. Thanks.

22 CHAIRMAN MINOW: Well said.

1 Sharon?

2 MS. BROWNE: I think that a lot of
3 appreciation should be given to the staff as well as
4 Carol. When we first started, I think we had over 20,
5 or close to 20, items outstanding, and now we're down
6 to three. And I think you've done, and the entire
7 management has done, an awesome job in getting this
8 down to a very manageable and very outstanding job. So
9 kudos.

10 CHAIRMAN MINOW: Hear, hear. And at the end
11 of the day, we'll have better systems and processes,
12 and so that's very good. And so thanks to you, Jim, as
13 well.

14 And speaking of Jim, we now turn to a report
15 on the Public Welfare Foundation grant and our research
16 agenda.

17 PRESIDENT SANDMAN: I have several things to
18 report on the Public Welfare Foundation grant. First,
19 completing my review of an interim report that
20 synthesizes all of the work that our consultants have
21 done to date, one component of that will be some
22 recommendations that we will test with our advisory

1 committee on specific outcome measures that we might
2 propose to implement with our grantees.

3 In formulating those, we want to take careful
4 account of outcome measures that are already in use by
5 other funders, particular IOLTA programs, in some
6 modest number of states, and particularly in
7 California, where they're proposing to introduce new
8 outcome measures shortly.

9 California is the biggest state. The IOLTA
10 program there has 99 grantees. We have I believe it's
11 11 grantees in California. We think that we would be
12 well advised to take a careful look at what they're
13 doing, and to the extent that it makes sense, to
14 piggyback on what they're doing, not to contradict or
15 vary from it except for good reason.

16 David Bonbright, who presented at the meeting
17 in Austin in January, had a meeting recently with the
18 executive director of the California IOLTA program to
19 talk about the direction they're headed in. What they
20 appear to be doing is developing a refinement of the
21 outcome measures that have been in use for some years
22 by some large IOLTA programs, particularly New York and

1 Texas.

2 So I describe it as the 2.0 version of what's
3 already been in place, not wildly different, an
4 enhancement. So that's the general approach that we'd
5 like to take.

6 More fundamentally, we'll want to be
7 discussing with our advisory committee what it is that
8 LSC will assess once we have these measures in place.
9 And what I'm thinking of is looking to assess how
10 grantees use data, not simply what the data show. I'll
11 give an example of what I'm talking about.

12 The Legal Aid Society of Cleveland, which I
13 regard as one of the leaders nationwide in the use of
14 data, went through an exercise not long ago where they
15 looked at their mortgage foreclosure work and their
16 track record in mortgage foreclosure cases, and they
17 correlated the results they had achieved with the
18 income levels of their clients.

19 And what they saw was that if their clients
20 were at or below 75 percent of the federal poverty
21 guideline, they couldn't win a case for them. And the
22 reason was they simply didn't have enough money, and

1 there was nothing legal that was going to, at least
2 over the long term, put them in a position where they
3 would be able to afford the house.

4 They made a decision, as a result of their
5 study and the review of that data, to stop doing
6 foreclosure cases for people whose income was at or
7 below 75 percent of the federal poverty guideline.
8 That may seem harsh, but I think there's a counter
9 argument that it was actually a very reasonable
10 decision about how to allocate scarce resources, and to
11 permit them to direct their resources to the benefit of
12 clients for whom they might have a greater chance of
13 success.

14 That's good use of data. I wouldn't want to
15 evaluate them in that situation based on poor results
16 for people who were at or below 75 percent of the
17 poverty guideline. They should be evaluated based on
18 what they learned from that data and then how they used
19 it.

20 And that's a different approach from what
21 we've been talking about, just looking at the numbers
22 of the outcomes. Counting favorable outcomes always

1 runs the risk of what they call "creaming," of pushing
2 grantees in the direction of handling easy cases, quick
3 wins, and being overly risk-averse. And I don't think
4 that that's what we want to do.

5 So these are some of the concepts that we're
6 going to be testing, and we expect to have a meeting
7 with our advisory committee in early May, although it's
8 not been scheduled yet.

9 CHAIRMAN MINOW: That sounds really important.
10 But two questions. How do you distinguish unsuccessful
11 results that you think are worrisome and unsuccessful
12 results that reflect the kind of judgments that you're
13 identifying, number one? And number two, how much are
14 the development of such measures generalizable or
15 spreadable from one context to another?

16 PRESIDENT SANDMAN: Well, on the first, I
17 think that's going to have to be a function of a
18 dialogue with the grantees. I don't know that we're
19 going to be able just to have standardized form
20 reporting that, on its face, is going to allow us to
21 make those judgments.

22 There will have to be good communication about

1 these things and narrative explanations given by the
2 grantees about what their interpretation of the data is
3 and what use they propose to put it to.

4 Your second question?

5 CHAIRMAN MINOW: Well, it was about
6 generalizability to other contexts. But before we get
7 to that, at the risk of introducing the controversial
8 subject of figure skating, it's striking to me that in
9 the Olympics, people have developed scoring techniques
10 that reflect the difficulty of the particular task as
11 opposed to simply did you succeed or fail in the task.
12 And it sounds like a concept like that might be
13 helpful.

14 MR. LEVI: We can all have our numbers.

15 (Laughter.)

16 PRESIDENT SANDMAN: And then you'll have the
17 problem of the Russian judges.

18 (Laughter.)

19 MR. LEVI: For example, now that her program
20 has learned this, is that information something that
21 other programs would benefit from knowing? Or is it
22 not transferable, say, from Colleen Cotter's program

1 to, say, the Chicago program or the New York program?

2 PRESIDENT SANDMAN: Colleen has spoken about
3 this at a number of conferences, so she's tried to
4 spread the word. My intuition is that there is
5 probably a lesson to be drawn from their experience,
6 but I would be hesitant to jump to that conclusion.

7 MR. LEVI: Does part of the grant actually
8 allow for that kind of testing, or a followup grant,
9 maybe? Maybe that's a way to get --

10 PRESIDENT SANDMAN: Yes. Yes.

11 MR. LEVI: -- some more money?

12 PRESIDENT SANDMAN: Yes.

13 CHAIRMAN MINOW: I do want to learn from the
14 mistakes in other fields. So we know that in
15 standardized testing in education, in order to have
16 higher pass rates, there's been a deflation of the
17 rigor of the tests. And that would be really
18 unfortunate.

19 And yet if you switch all the way over to
20 narrative and non-quantitative measures, we also worry
21 about lack of accountability, and you don't really know
22 what you're getting. So I think that we're all keenly

1 interested in this subject.

2 PRESIDENT SANDMAN: This is going to be an
3 iterative process, and we're not going to get something
4 out of this project that, when it's delivered, is an
5 end product that we stop with. It's going to be a
6 first step. And we're going to have to learn from that
7 first step and constantly be refining.

8 But I want to be clear about expectations
9 here, that we're not going to have some silver bullet
10 as a result of this one project that all of a sudden is
11 going to have outcome measures and assessments that are
12 perfect.

13 CHAIRMAN MINOW: Julie?

14 MS. REISKIN: I don't know how you measure or
15 regulate this. But what I've seen in the nonprofit
16 world is that your ability to learn from data and use
17 data has so much to do with the internal culture of the
18 organization.

19 Is it a culture of learning, where staff and
20 managers are people with enough professionalism to be
21 willing to be held accountable publicly, versus a
22 culture where people are going to try and hide and play

1 games to get a number that makes them look good because
2 they're not given that kind of -- and I just don't know
3 how to deal with that, but that's how you get good
4 data.

5 But, on the other hand, it is such a balancing
6 act. So even with quality data, customer service data,
7 if you learn from a study that 50 percent of your
8 clients aren't getting a call back for a month, that's
9 serious.

10 So again are we going to say, well, as long as
11 you're doing something about it, it's okay? I don't
12 know. These are really tough issues. But it's good
13 that we're doing something with it.

14 CHAIRMAN MINOW: Great. Charles?

15 MR. KECKLER: Jim, as a part of the study,
16 you're talking about thinking about the outcome
17 measures. What about the output measures? If we're
18 going to have a wide variety and diversity, especially,
19 of different outcome measures, are we thinking about
20 trying to find some standardized output measures as
21 part of the data project?

22 PRESIDENT SANDMAN: The project is focused

1 more on outcomes than outputs largely because we're
2 looking to get beyond where we are currently, which is
3 really entirely output reporting. And that's not to
4 say that the output reporting that we're getting
5 couldn't be improved. But --

6 CHAIRMAN MINOW: Just to be sure we're all on
7 the same page, output is effort expended and outcomes
8 are results?

9 PRESIDENT SANDMAN: Outputs would be cases
10 closed, number of clients served, without regard to
11 what the result of the matter was.

12 CHAIRMAN MINOW: Result. Right.

13 MR. KECKLER: So it's --

14 CHAIRMAN MINOW: Recordkeeping.

15 MR. KECKLER: Beyond resources that are put
16 into the project, it's the immediate
17 result -- sometimes people talk about immediate results
18 versus longer-term results -- so cases are there, but
19 the most obvious one is hours worked, and money
20 expended produces X amount of hours worked.

21 So that's an output that I've had an interest
22 in. And I just wonder whether there's been interest in

1 the utility of that from the standpoint of the data
2 project.

3 CHAIRMAN MINOW: Gloria?

4 PROFESSOR VALENCIA-WEBER: I appreciate the
5 discussion of what is being attempted, including by
6 some of our grantees. I think, as we look at what
7 comes in from what are these initial efforts, we also
8 want to keep in mind what it is we are measuring.

9 The definition of success is one of the things
10 that will have more than just two choices, and
11 foreclosure can't be just whether or not the plaintiff
12 gets to keep the house.

13 Like child custody, it's not about whether
14 somebody gets to retain whole custody or no custody.
15 There's all kinds of moderated forms of outcomes that
16 are still successful in some ways. So that's all I
17 want to keep in mind as we're looking at these.

18 CHAIRMAN MINOW: Great. That's a lot of
19 insight. So mindful about the different role of the
20 Board and the staff and then the advisory board for
21 this grant, I think that you're hearing, Jim, a lot of
22 interest here, and there's some expertise. And so if

1 there's an intermediate document that can be shared and
2 that we all can just give some reactions to, that might
3 be useful.

4 I think that we'll go on now to the evaluation
5 of the LSC Comptroller, Vice President for Grants
6 Management, and Vice President for Legal Affairs. As
7 we all know, this Committee is charged with performance
8 review of our very top people. But the rest of the
9 performance review is to be done by them, but we are
10 here as a Committee to hear about that. So Jim?

11 PRESIDENT SANDMAN: I have completed
12 evaluations of the three other officers of the
13 Corporation, Ron Flagg, Dave Richardson, and Lynn
14 Jennings, and have met with each of them to discuss
15 their evaluations. I'll give a brief summary of each
16 here.

17 Ron has been with us for -- it'll be a year in
18 June, so he was here for nine months at the time that I
19 did the evaluation. My assessment is that his
20 performance has been outstanding, that he has been
21 unusually productive, efficient, and has produced very
22 high quality legal work.

1 In the nine months since he joined us last
2 June, his office has posted eleven external opinions
3 and seven internal opinions of, I believe, very high
4 quality, and has given guidance on issues that have
5 been pending for some time. We've made good progress
6 there.

7 CHAIRMAN MINOW: Do you have a sense, Jim,
8 about how that would compare with any prior similar
9 period?

10 PRESIDENT SANDMAN: Yes, I do. There were
11 eleven external opinions posted in the last nine
12 months. In all of 2012, there were two. In 2011,
13 there was one. In 2010, there were four. There were
14 seven internal opinions posted during the last nine
15 months. The number was three for 2012, five for 2011,
16 and three for 2010.

17 Ron is also playing a broader management role.
18 He's assisting with the implementation of the
19 recommendations to the Pro Bono Task Force. He's also
20 playing a lead role in implementation of our risk
21 management policies and presents regularly to the Board
22 on that. He has an excellent set of management skills.

1 For Dave Richardson, I did --

2 FATHER PIUS: Just back to Ron.

3 PRESIDENT SANDMAN: Yes?

4 FATHER PIUS: Are we caught up on the FOIA
5 requests? Is that all --

6 PRESIDENT SANDMAN: Yes. We have no backlog
7 on Freedom of Information Act requests. I reported on
8 that in my own evaluation; I didn't mean to steal Ron's
9 thunder. But we keep very careful track of that, yes.

10 I did have a conversation with Robert Grey,
11 who also deals with Dave Richardson. I told Dave that
12 I think he has implemented and manages an excellent
13 system of controls. I have high confidence in the
14 integrity of our processes and our people.

15 I do not lose sleep about the operations of
16 Dave's shop. I think that the integrity of their
17 processes was borne out in the review that the Office
18 of the Inspector General did in early 2013 previously
19 reported to the Board.

20 Dave has a clear understanding of our needs.
21 He has good relationships with the people at Treasury
22 who make our funds available to us, and also with other

1 stakeholders.

2 As I discussed with Dave, I think there's room
3 for improvement in internal communication and
4 responsiveness to internal clients and the timelines of
5 responsiveness to the auditors, and we did discuss the
6 matter that was the subject of a management letter from
7 the auditors at the end of the last audit. And he and
8 I are also going to work together to improve our
9 internal budgeting process, particularly as it pertains
10 to managing our carryover balance.

11 Any questions?

12 MS. REISKIN: If I remember correctly, that
13 was similar to last year's evaluation. Am I
14 remembering correctly?

15 PRESIDENT SANDMAN: Yes.

16 MS. REISKIN: I just wanted to make sure.

17 PRESIDENT SANDMAN: With Lynn, my assessment
18 is that her performance is excellent overall. Lynn
19 brings an unusual and valuable combination of skills to
20 her position. She has experience in change management,
21 policy, data analysis, reporting systems, personnel
22 management. She's familiar with best practices.

1 She's made progress on many fronts and manages
2 to keep a lot of balls in the air. She has a broad
3 range of responsibilities, and I think it's a challenge
4 to keep everything moving at once, but she does an
5 excellent job trying to manage that.

6 She is well integrated with other offices of
7 LSC. She makes good use of benchmarking, particularly
8 with other funders, and I think brings a sense of
9 professionalism and high standards to LSC.

10 We have talked about picking up the pace of
11 our implementation of the recommendations of the Fiscal
12 Oversight Task Force and working on process
13 improvements, particularly reviewing the processes by
14 which we handle visits to grantees and the structure of
15 the reports that we issue. That's a longer-term
16 project, but process improvements is a critical part of
17 her portfolio.

18 CHAIRMAN MINOW: Sharon?

19 MS. BROWNE: With the information you provided
20 on Ron and Lynn, and both are doing great jobs, you
21 mentioned that Ron is going to be working on the
22 implementation of the Pro Bono Task Force. And Lynn

1 has also been working on the Pro Bono Task Force.

2 PRESIDENT SANDMAN: Yes.

3 MS. BROWNE: Are they sharing that
4 responsibility, or is it moving from Lynn over to Ron?

5 PRESIDENT SANDMAN: No. Yes, I'm sorry. I
6 should have mentioned that. That is one of the many
7 balls that Lynn keeps in the air. She has working on
8 that as well. They're working collaboratively on this,
9 meet together regularly. There's a lot of work to do
10 there, so I think having two people handle it is
11 appropriate and better than having one.

12 CHAIRMAN MINOW: And I can weigh in on that as
13 well. There are many different recommendations from
14 the Task Force, and they are taking lead responsibility
15 on different ones of them while collaborating.

16 So thank you. That means that we have done
17 our job in overseeing you do your job, Jim. So thank
18 you very much. And this is not a process that we have
19 used longstanding, so when we are next asked to assess
20 the work of this Committee, this is one of the things
21 you might want to think about: Is this a good process?

22 We now will turn to consider and act on LSC

1 non-discrimination and anti-harassment policy. And Ron
2 Flagg. Thank you.

3 MR. FLAGG: Thank you. Is the mike on? I
4 usually think of a green light as being on, but I'll
5 speak to the red light.

6 As the Committee is aware, Management is
7 currently reviewing a number of our internal policies
8 and procedures, really for two purposes: one, to see
9 whether they comport with the best policies among
10 not-for-profit and other grantmaking organizations, and
11 second, to consolidate the various places in which we
12 have internal guidance.

13 You have before you a set of materials
14 relating to non-discrimination and anti-harassment
15 policy that provides an example of the multiplicity of
16 sources of policy we currently have. As we sit here
17 today, there are a couple of paragraphs in our code of
18 conduct, and there are a few more paragraphs in our
19 employee handbook, and neither separately nor together
20 were those policies, in our view, sufficiently robust.

21 So with the assistance of the Office of the
22 Inspector General, Management has drafted a new, much

1 more comprehensive policy which you should have before
2 you and which we recommend should supersede the other
3 policies which I've mentioned.

4 The changes are quite substantial. From
5 30,000 feet we previously prohibited discrimination and
6 harassment, and we still do, but the detail with which
7 that's spelled out and the detail with which the
8 procedures are spelled out are much more comprehensive.

9 You will note in our statement of policy quite
10 a long list of protected traits that are subject to
11 this policy. We didn't think these up on our own; most
12 of them come either out of federal civil rights laws,
13 or the District of Columbia Human Rights Act has some
14 protected categories which at least I hadn't
15 encountered before.

16 I should note, particularly for those who are
17 listening on the phone or who have not gotten a
18 redlined version of the policy, that we made just in
19 the last day or so a couple of small changes, which
20 I'll just read into the record. The Committee and the
21 Board should have the changes in a redlined document
22 that I handed out earlier.

1 But on the first page of the policy, in the
2 Statement of Policy, which is heading number 2, the
3 second paragraph, the eighth line, we've added some
4 language or we've amended the language with respect to
5 good faith.

6 So the sentence now reads, "LSC will not
7 retaliate nor tolerate retaliation against any
8 director, officer, or employee who in good faith
9 reports or participates in the investigation of such
10 incident."

11 And we've made a similar change on page 6
12 under heading 7, titled No Retaliation. The first
13 sentence has been revised to read, "Retaliation is
14 prohibited by LSC or its directors, officers, or
15 employees against any person who in good faith uses
16 this complaint procedure, reports harassment or
17 discrimination, or files, testifies, assists, or
18 participates in any manner in any investigation,
19 proceeding, or hearing conducted by a governmental
20 enforcement agency." So I think that --

21 CHAIRMAN MINOW: Would you like some
22 questions?

1 MR. FLAGG: That would be good.

2 CHAIRMAN MINOW: Well, thanks for the work
3 that this reflects, and in your ongoing effort to
4 produce more streamlined and coherent policies. This
5 is certainly a worthy one.

6 I was struck by the combination, though, of
7 one policy to govern people who are employees of LSC
8 and another for OIG. What if the alleged incident
9 involves somebody from one staff and somebody from
10 another staff?

11 MR. FLAGG: I believe, the way this is
12 written, it's the --

13 CHAIRMAN MINOW: "The Accused" is the one
14 where it falls. But I'm asking the question. That's
15 how it's written, but does that make sense?

16 MR. FLAGG: I think, obviously, this all stems
17 from our efforts to make sure that the IG remains
18 appropriately independent of LSC Management. And so we
19 typically don't have LSC Management conducting
20 investigations of the IG's staff.

21 FATHER PIUS: But as this is written, wouldn't
22 that imply that you would? If the employee were an LSC

1 staff member and the harassing person were an OIG
2 member, then it sounds like the LSC would be
3 investigating because the focus is on the complaining
4 employee rather than on the alleged harasser.

5 CHAIRMAN MINOW: Exactly. Exactly.

6 MR. FLAGG: I think that's a point well taken.
7 I think we should revise it so that if an IG employee
8 is accused of --

9 CHAIRMAN MINOW: Harassment.

10 MR. FLAGG: -- harassment or discrimination,
11 it's the IG who should be conducting the --

12 CHAIRMAN MINOW: Precisely.

13 MR. FLAGG: And we'll revise the language to
14 carry that out.

15 CHAIRMAN MINOW: Great. Thank you. That's
16 very helpful. Second question is, I don't know if it's
17 appropriate to put in this policy, but to make clear
18 that it is not retaliation to have assessment of
19 somebody's work performance, so that precisely at the
20 moment that we have a work performance process that is
21 becoming more rigorous, there could be a misuse of this
22 policy to claim that it's retaliation.

1 And I just wonder about how to make clear that
2 this process is separate from what is an ordinary
3 course of business of evaluation of someone's work
4 performance.

5 MR. FLAGG: I agree with you. Let me think of
6 some language to address that.

7 CHAIRMAN MINOW: And John has a question.

8 MR. LEVI: When you look on page 5, at the top
9 there, "The LSC President may submit a written appeal
10 to the Board of Directors." Now, I don't know whether
11 there's another section, as we sit here today, that
12 talks about what the Board of Directors is supposed to
13 do when it gets an appeal.

14 I don't know what the process is, so that this
15 punts -- which is appropriate, I think --

16 CHAIRMAN MINOW: Then what?

17 MR. LEVI: -- there's no guidance to the Board
18 as to then what it would do. And this may come up
19 elsewhere.

20 The reason I asked whether the process exists
21 elsewhere, there may be other places in the policies
22 where referrals are made to the Board. You may want to

1 take a look at that entire basket and have a uniform
2 way of dealing with it, unless this is the only place.

3 MR. FLAGG: No. I think you're right. Almost
4 invariably, if there are conflict of interest issues or
5 whistleblowing type issues that involve --

6 MR. LEVI: It may be that it's handled
7 somewhere else.

8 CHAIRMAN MINOW: I doubt it.

9 MR. FLAGG: I believe, in all of those
10 instances, the buck stops there and it doesn't tell you
11 how --

12 MR. LEVI: Yes. And I'd be happy to design a
13 process. But I think it would be better to design one
14 now.

15 CHAIRMAN MINOW: Yes. Anticipate it, anyway.

16 MR. LEVI: Yes.

17 CHAIRMAN MINOW: Sharon?

18 MS. BROWNE: I think a lot of work went into
19 this policy. And I get the sense, as I was reading the
20 policy, that it is desirable to get this result, any
21 harassment allegation result, internally instead of
22 letting it go beyond the internal process.

1 And so if that was the intent, I had a little
2 bit of concern on who the employee should be talking
3 to. Here it says you can talk to your supervisor or an
4 H.R. person. And it seems to me that we should open up
5 the process.

6 If we're trying to get this resolved
7 internally, the process should be opened up so that the
8 employee felt comfortable talking to anyone in
9 Management, any supervisor, and not limit it to their
10 supervisor, immediate supervisor, or to H.R., because
11 if the supervisor of that employee happens to be the
12 alleged harasser or discriminator, that employee's
13 going to feel very uncomfortable going there.

14 So I'd like to see that opened up to anybody
15 who's a supervisor or anybody who's in Management or
16 anybody in H.R. And then --

17 CHAIRMAN MINOW: Or, Sharon, would you accept
18 as a friendly amendment, if the allegation pertains to
19 the supervisor, then open it up? Because otherwise --

20 MS. BROWNE: No.

21 CHAIRMAN MINOW: You think anyway?

22 MS. BROWNE: I think it would be anybody

1 because I can see an employee feeling maybe --

2 CHAIRMAN MINOW: More comfortable?

3 MS. BROWNE: -- not comfortable going to their
4 immediate supervisor, but maybe feeling more
5 comfortable talking to somebody else. If it's a sexual
6 harassment claim, maybe they'd feel comfortable going
7 to --

8 CHAIRMAN MINOW: Sure. That's always true.

9 MR. FLAGG: I think that's fine, with the
10 caveat that it has to get funneled to the director of
11 H.R.

12 MS. BROWNE: Oh, well, any manager or
13 supervisor has the duty and the responsibility --

14 MR. FLAGG: Right.

15 MS. BROWNE: -- to then take it over to H.R.
16 And I think all your harassment training,
17 discrimination training, will tell you that there is
18 that process in place, or there should be. So I would
19 just want to open that up.

20 And then I wasn't sure that it was very clear
21 that verbal reports are as encouraged as a written
22 complaint. When I looked at the written complaint

1 form, I felt that it really did discourage reporting of
2 any discrimination and harassment. And if I were an
3 employee, I would almost kind of say, oh, this is too
4 scary. I'm not going to do it.

5 And again, I think we're trying to get the
6 informal process in place where it could be resolved.
7 And so I would like to see more encouragement that an
8 employee could either verbally go to somebody -- a
9 supervisor or manager or H.R. -- verbally as well as
10 doing a complaint.

11 And I just didn't see that encouragement there
12 as well. Maybe just a little language or
13 encouragement, because I can see where an employee
14 might feel, well, maybe I'm overreacting, rather than
15 wanting to do a full-blown complaint. So that would be
16 something that I would want to have some sensitivity
17 to.

18 And the third thing is, I'm assuming that this
19 went to a consultant, an employment consultant, to take
20 a look at the policy, take a look at the complaint
21 form, and make sure that it's --

22 CHAIRMAN MINOW: State of the art.

1 MS. BROWNE: -- really set out in the best
2 manner possible.

3 MR. FLAGG: Well, I'm always happy to get
4 advice from as many sources as we can get. We have
5 developed this policy looking at the policies of many,
6 many different organizations. So I'll be happy to take
7 that under advisement and consult with others.

8 CHAIRMAN MINOW: Well, in the same spirit, I
9 also thought the complaint form was a bit daunting and
10 long. I don't know if that's what is the state of the
11 art. In my experience, I haven't seen complaints that
12 are that long.

13 I also wondered -- there's a process that's
14 laid out for investigations and the reporting about the
15 investigations and appeals. There didn't seem to be
16 any option of mediation or steps that would be
17 appropriate that are other than punishing the
18 individual who's apparently committed a violation.

19 And there can be training. There can be
20 mediation. There can be many other steps. And I just
21 didn't see that.

22 MR. FLAGG: I think it is in there. I think

1 there's a reference to, "If the H.R. director
2 determines that there's been no harassment but some
3 potentially problematic conduct is revealed,
4 recommendations may be made for preventive or
5 ameliorative action."

6 CHAIRMAN MINOW: I see.

7 MR. FLAGG: That would certainly also include
8 mediation.

9 CHAIRMAN MINOW: I see.

10 MR. FLAGG: But we can certainly --

11 CHAIRMAN MINOW: A little bit more explicit
12 detail would be helpful there. And also, since there
13 are many borderline cases about what is and is not
14 harassment, I don't think I would tie it so firmly to
15 if there's a finding that there is no harassment.

16 Julie?

17 MS. REISKIN: The form actually fairly mirrors
18 what EEOC and most government discrimination forms do,
19 which I guess -- I don't know, maybe all government
20 forms are daunting.

21 I guess I wanted to respectfully disagree a
22 little bit with Sharon. I think that people should

1 always feel comfortable to talk to their supervisors.
2 I'd like to bounce something off of -- like am I
3 overreacting, that kind of thing, is really important.

4 But the problem with the verbal -- and I'm
5 often the one that's demanding that people have a
6 verbal option because I represent a lot of people who
7 can't write. I don't think that's relevant to the
8 employees here. I don't think we have employees that
9 can't physically or mentally write who work here.

10 So often, I'm usually arguing for verbal. But
11 I also can see some concerns with verbal because then,
12 unless the person who takes it is charged with writing
13 it down and sending it back to the person.

14 And then in terms of having another person
15 that they can go to, I understand that it should be
16 someone you're comfortable with. But there should be
17 some limits because you don't want someone going and
18 gossiping to ten people because -- I mean, I can see
19 both sides of it. I just think that there should be
20 some kind of parameters.

21 We have really good management in place now.
22 But then one other thing I noticed, and maybe I missed

1 it, is I saw what -- all over the policy, it's if
2 so-and-so, the person you're reporting to, is the
3 problem, I can go here. I didn't see that anywhere if
4 the H.R. director is the problem.

5 MR. FLAGG: I think it's in --

6 MS. REISKIN: Is it? Okay.

7 MR. FLAGG: Yes. On page 4.

8 MS. REISKIN: Okay. I must have missed it.

9 MR. FLAGG: If the discriminatory or harassing
10 conduct involves the H.R. director, the complainant
11 goes to the ethics office.

12 MS. REISKIN: Oh, okay. I'm sorry. So I
13 don't know. I could go both ways.

14 CHAIRMAN MINOW: Well, we're not going to
15 write this as -- we're not going to be the committee.
16 But you're getting some input here.

17 Gloria?

18 PROFESSOR VALENCIA-WEBER: I guess I'm an
19 alternative to what Julie and Sharon have raised. Our
20 institution, a very large state institution, is going
21 through its harassment policies, and what is coming out
22 is, I think, one of the better models.

1 Initially, when the individual wants to check,
2 am I misinterpreting what has happened, et cetera, that
3 they should be able to engage initially in an oral
4 conversation with somebody, and that that's
5 confidential, doing that reality check.

6 And what may arise out of that protected
7 conversation is the decision to fill out the form,
8 which I agree with Julie is pretty standard, and
9 possibly even help the individual on how he or she
10 states the nature of the complaint.

11 But often, having that initial ability to
12 discuss it with somebody in confidentiality, then, may
13 prevent some complaints, but it also may result in a
14 much more coherent and precise complaint.

15 MR. FLAGG: Yes. Let me just -- and these
16 comments are all very helpful, and we're obviously
17 going to need to do some more work on this. I think,
18 given the size of our organization, the intent here is
19 that our H.R. director has both training and experience
20 with these sorts of things, which is why the H.R.
21 director is prominently mentioned.

22 And while certainly I don't disagree that

1 people should talk in the first instance to somebody
2 who they're comfortable with, I think the intent here
3 is that pretty quickly, somebody who feels that they've
4 been subjected to harassment or discrimination is going
5 to have a conversation with our H.R. director, who by
6 training and experience, is the person who we think is
7 best qualified to do exactly the sort of thing that
8 you're talking about, which is to do some sort
9 of -- have a conversation which gets at whether this is
10 something that is quite serious or less serious and can
11 be resolved in some less formal way.

12 So that's certainly the intent, and we can
13 make that more explicit.

14 MR. LEVI: I have one other kind of thing that
15 I think -- I'm not clear on whether you meant it to be
16 covered here or not. But we have folks from OCE and
17 from our program counsel that go out into the field,
18 and if they become subjected to harassment of a kind
19 out there and make a complaint, they would make the
20 complaint here, I assume. But then the question is,
21 how does that get investigated?

22 MR. FLAGG: If they were subject to harassment

1 by a grantee employee?

2 MR. LEVI: Yes. Yes.

3 MR. FLAGG: I would think that would be
4 subject to the --

5 MR. LEVI: Well, but I think we want them to be
6 able to report internally here that that's happened.
7 And then we have to be able -- an employee has to feel
8 safe in making -- they don't know the grantees, and
9 they wouldn't even know the grantee process.

10 So we have to have -- and I didn't see it
11 here -- a clearer mechanism for that to get handled.
12 And it's our responsibility because we're the employer
13 putting them at risk out there in that circumstance.

14 So then we have to have a method for following
15 up with -- we take the complaint. I assume we then
16 turn to the grantee and say, we've received this
17 complaint. We need to investigate it. We need your
18 help on that.

19 MR. FLAGG: Right.

20 MR. LEVI: And I assume they'll be
21 cooperative.

22 MR. FLAGG: We do have some leverage.

1 MR. LEVI: But where else would the employee
2 feel is a safe place to bring the complaint? And I do
3 think that it is us. I don't know if there's
4 some -- again, I don't have all the -- is it handled
5 anywhere else?

6 MR. FLAGG: No. It would --

7 MR. LEVI: Okay. I think it has to be handled
8 here.

9 MR. FLAGG: Look. At the end of the day, it's
10 going to have to be handled by the grantee.

11 MR. LEVI: Yes.

12 MR. FLAGG: And I don't disagree that there
13 can be a reporting mechanism to us. But the resolution
14 mechanism --

15 MR. LEVI: Yes. But you see, ultimately, it's
16 our responsibility to make sure that employee
17 feels -- because they could have an ongoing
18 responsibility for that part of the country or for that
19 grantee program --

20 MR. FLAGG: Right.

21 MR. LEVI: -- and have to be dealing with a
22 particular -- anyway.

1 MR. FLAGG: No. I got it.

2 MR. LEVI: I think -- yes.

3 PRESIDENT SANDMAN: There is guidance on this
4 in an analogous context. When an employee is dealing
5 with an employer's vendors and the vendor misbehaves --

6 MR. LEVI: Yes. That's it.

7 PRESIDENT SANDMAN: Well, the employer has the
8 responsibility to provide an appropriate work
9 environment for the employee. And if the environment
10 is inappropriate because of the conduct of the vendor,
11 the employer needs to do something to protect the
12 employee in that situation. So I think there are
13 situations like that we can draw on to modify this.

14 CHAIRMAN MINOW: I fear that we will not be
15 able to vote on the resolution because I think that
16 there have been some questions that have been raised.

17 MR. FLAGG: Oh, no. I don't think you should
18 be afraid. We welcome the input. The input's very
19 constructive. We've heard what you've said, and we'll
20 come up with another draft, hopefully, at the next
21 meeting.

22 CHAIRMAN MINOW: I see that we're running out

1 of time allotted for the Committee meeting. And Julie
2 has one more comment?

3 MS. REISKIN: Yes. I'd just like to see some
4 language in there about reasonable accommodation.
5 Because with disability discrimination, sometimes the
6 discriminatory act is just failure to respond or
7 failure to engage in the interactive process.

8 And it looks different than other types
9 of -- I mean, it can look the same, like with
10 harassment, but it looks a little different. And
11 there's good EEOC guidance.

12 CHAIRMAN MINOW: I think we're all very
13 grateful to you for producing a coherent document, and
14 I've learned something about D.C. and tobacco, and
15 that's itself instructive to me. That was news to me
16 about tobacco harassment. Is there gum-chewing as
17 well? No?

18 (Laughter.)

19 MR. FLAGG: If there is, it's in the policy.
20 If it's not in the policy, it's not in the law.

21 CHAIRMAN MINOW: All right. Very good. So if
22 anyone has any further thoughts, I think you can be

1 directly in touch with Ron.

2 MR. FLAGG: Yes.

3 CHAIRMAN MINOW: So thank you very, very much.

4 So I think we are running out of time, so I
5 don't want to foreclose anything. But if anyone has
6 any other business to suggest, let me know.

7 (No response.)

8 CHAIRMAN MINOW: Is there any public comment?

9 (No response.)

10 CHAIRMAN MINOW: Then I will consider a motion
11 to adjourn.

12 M O T I O N

13 MS. REISKIN: So moved.

14 MS. BROWNE: Second.

15 CHAIRMAN MINOW: All in favor?

16 (A chorus of ayes.)

17 CHAIRMAN MINOW: Thank you all very much.

18 (Whereupon, at 2:59 p.m., the Committee was
19 adjourned.)

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22