

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

PROVISION FOR THE
DELIVERY OF LEGAL SERVICES COMMITTEE
OPEN SESSION

Friday, October 28, 2005
1:30 p.m.

The Grove Hotel
245 South Capitol Boulevard
Boise, Idaho

COMMITTEE MEMBERS PRESENT:

David Hall, Committee Chairman
Bernice Phillips
Florentino A. Subia
Ernestine P. Watlington (by telephone)

OTHERS PRESENT:

Helaine M. Barnett, LSC President
Karen Sarjeant, Vice President for Programs
& Compliance
Mattie Condray, Senior Assistant General Counsel

OTHERS PRESENT: (Continued)

Ernesto G. Sanchez, Idaho Legal Aid Services (ILAS)
David Maddox, Assistant Inspector General for
Resource Management
Laurie Tarantowicz, Assistant Inspector General
& Legal Counsel
Kirt West, Inspector General
Sarah Singleton, Board Nominee
Don Saunders, National Legal Aid & Defenders
Association
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel & Corporate Secretary
Charles Jeffress, Chief Financial Officer
Tom Polgar, Director, Office of Governmental
Relations & Public Affairs
Howard Belodoff, ILAS
Patricia Batie, Manager of Board Operations
Sarah Singleton, Board Nominee
Linda Perle, Center for Law & Social Policy; and
other staff and members of the public

C O N T E N T S

	PAGE
Approval of Agenda	4
Approval of the Committee's meeting minutes of July 28, 2005	5
Presentation on Draft Revision of LSC Performance Criteria	
a. Overview Karen Sarjeant - Vice President, Programs and Compliance	7
b. A Grantee's Perspective Howard Belodoff - Associate Director, Idaho Legal Aid Services	20
c. Next steps Helaine Barnett	44
Public comment	51
Consider and act on other business	51
Adjournment of meeting	51
MOTIONS: Pages 3, 4, 50	

P R O C E E D I N G S

(1:30 p.m.)

1
2
3 MR. HALL: I'd like to call to order the
4 meeting of the Provisions Committee, and welcome
5 everyone here.

6 We have Ernestine Watlington who is on the
7 phone and is participating in the committee via
8 telephone and is a committee member.

9 I'd also like to welcome Bernice Phillips to
10 her first Provisions Committee meeting, and glad to
11 have you officially on the board and officially a part
12 of this committee.

13 I would first ask for an approval of the
14 agenda that is in the board book.

M O T I O N

15
16 MS. PHILLIPS: So moved.

17 MR. SUBIA: Second.

18 MR. HALL: It has been moved and second, and I
19 assume we all vote in favor of the agenda being
20 approved and moving forward with it.

21 There are some minutes from our last meeting,
22 the July 28th meeting at 2:05. If you have looked over

1 those minutes, I would also like to entertain an
2 approval of the minutes of this committee's meeting on
3 July 28th.

4 M O T I O N

5 MR. HALL: Is there a motion?

6 MS. PHILLIPS: So moved.

7 MR. HALL: And second?

8 MR. SUBIA: Second.

9 MR. HALL: Okay.

10 All in favor of that motion --

11 (Chorus of ayes.)

12 MR. HALL: Thank you very much.

13 Hearing no objection, we have now approved the
14 committee meeting minutes of July 28th.

15 The vast bulk of our committee meeting today
16 is going to be devoted to an analysis of the
17 performance criteria.

18 Some of you may recall that the Provisions
19 Committee, for some time, has been focused on this
20 whole issue of quality and how you define quality. We
21 have devoted some of our committee meetings in the past
22 to focusing on that broad issue of quality.

1 Today, this is an opportunity to explore one
2 of the tools that LSC has been using for some time to
3 ensure that quality delivery of legal services occurs,
4 and that is the LSC performance criteria.

5 There are ABA standards that are also used as
6 a way of governing what LSC does and how we go about
7 doing our work, but certainly, the LSC performance
8 standards are the most critical and ones on point for
9 us.

10 So, we wanted to have an overview of those
11 performance criteria, because they have been going
12 through a process of review, receiving comments from
13 other individuals, and we thought it would be good to
14 get an overview of that.

15 Karen Sarjeant, the Vice President for Program
16 and Compliance, will give us an overview of that.

17 We thought, also, that it would be good to
18 have a grantee's perspective on the performance
19 criteria -- that is, how do people deal with them from
20 the day-to-day work of delivering legal services -- and
21 Howard Belodoff, the associate director of the Idaho
22 legal services program, will present that.

1 I had also asked Helaine Barnett, who will be
2 joining us, to kind of talk about what are some next
3 steps, where do we go from here, and to also update us
4 on the ABA process.

5 So, that will be our major focus, and so,
6 Karen, welcome, and we'll turn it over to you.

7 MS. SARJEANT: Thank you very much, and good
8 afternoon.

9 I want to thank you for the opportunity to
10 meet with you today and share with you another aspect
11 of the work that LSC continues to do in support of
12 quality legal services programs.

13 As you know, President Barnett announced an
14 initiative built upon quality at the beginning of her
15 presidency, and today, we will be speaking about the
16 LSC performance criteria, which is the centerpiece of
17 LSC's ongoing focus on quality.

18 The revised criteria are significant
19 underpinnings of a quality initiative, and they are the
20 point from which LSC will build the rest of its ongoing
21 quality agenda upon, and our quality focus activities.

22 They are vitally important performance

1 measures that LSC employs in its mission to ensure
2 high-quality delivery of legal services.

3 In this presentation, as you noted, Professor
4 Hall, I am joined by Howard Belodoff, the associate
5 director of Idaho legal aid services.

6 I have known Howard since the early 1980s,
7 when I was in the Seattle regional office of LSC, and I
8 have always known Howard to be one of those legal
9 services attorneys who takes seriously the importance
10 of high-quality delivery. I am pleased to have him
11 join me today in making this presentation to the board.

12 We are going to make a presentation that will
13 essentially be in three parts.

14 I will first share with the Provisions
15 Committee a brief history of the creation of the
16 performance criteria. Then I'll talk some about the
17 role that the criteria play in our work to ensure
18 high-quality delivery of legal services. Next, I'll do
19 a brief overview of what the performance criteria say,
20 although I'm not going to go through them. They're
21 quite long, but I will give a very quick overview, and
22 then Howard will talk more specifically about one of

1 the criteria, one of the performance areas. And then
2 I'll share with you some of the thinking behind why we
3 decided it was time to do a revision of the performance
4 criteria and the process that we are using to
5 accomplish that that is involving field input.

6 Then Howard will talk about how his program
7 uses the performance criteria, and we will finish with
8 a brief discussion about the next steps in our process.

9 As we go through this, I encourage you to ask
10 us any questions at any time about what we are covering
11 in this presentation.

12 Very briefly, the history of the creation of
13 the performance criteria -- they were first developed
14 in 1993-94, and actually, probably started a few years
15 before that, in the LSC comparative demonstration
16 project and for the LSC peer review process.

17 They were created at a time when the legal
18 services delivery system was substantially different
19 than what it is today.

20 At that time, there was a much larger
21 dependence on LSC funding to support a larger segment
22 of legal services delivery. Obviously, this was before

1 the Congressional restrictions of 1996, and they were
2 created at a time where, as a community, we were just
3 beginning, I think, to start looking at statewide
4 delivery, and that push for statewide delivery took
5 further hold later in the '90s.

6 Both the comparative demonstration project and
7 the LSC peer review process involved program evaluation
8 and assessment, and the reason they were developed was
9 because there was a need to establish agreed-upon
10 criteria for evaluation of service delivery.

11 The use of the performance criteria when they
12 were first put in place and over the years have been
13 well received by programs, because they really do
14 provide helpful guidance in terms of what are the
15 standards and the guidance for what legal services
16 programs should be considering.

17 To some degree, the performance criteria were
18 patterned after the ABA standards for providers of
19 civil legal services to the poor, but there are some
20 major differences.

21 The ABA standards are aspirational. They are
22 not evaluation standards for performance review, and

1 they have a broader application to programs that are
2 not funded by LSC. The performance criteria, on the
3 other hand, are designed specifically for evaluation
4 purposes and are what we consider indicators of best
5 practices for the delivery of legal services in
6 LSC-funded programs.

7 The performance criteria are designed by LSC,
8 which is, as we all know, the major national funding
9 source for legal services programs, and so, in many
10 ways, they are written to meet the needs of our
11 programs in LSC, and in fact, I will talk a little more
12 later about the substantial field input we have
13 received and will continue to receive in the draft
14 process.

15 The performance criteria also reflect the
16 Congressional directives and restrictions, and when
17 they are applied, they must be applied consistent with
18 these restrictions.

19 Now I'd like to talk a little bit about the
20 role that the performance criteria play in our work to
21 ensure high-quality delivery of services.

22 As I noted, the performance criteria are

1 performance measures, and we use them in several ways.

2 We use them to assess and evaluate applicants
3 that participate in our competitive grants process.

4 We use them to provide detailed feedback to
5 those who have submitted applications.

6 We also use the performance criteria to assess
7 and evaluate those programs that ultimately receive LSC
8 funding, and on a periodic basis, are visited by LSC
9 assessment teams to determine the program's ability to
10 deliver high-quality services.

11 Additionally, others use the performance
12 criteria. Several funders, such as IOLTA programs,
13 have modeled their own sets of performance standards
14 for the programs they fund on the LSC performance
15 criteria.

16 Additionally, our programs -- we want to
17 encourage our programs -- and many of them do use the
18 criteria for their own self-evaluation.

19 They use them to help as they develop new
20 delivery projects, and they use them when they are
21 looking at performance standards and measures for their
22 own staff.

1 Now, what do the performance criteria actually
2 say?

3 They are very long.

4 They are complex, but we've tried very much
5 to -- as you go through them, you'll see there are lots
6 of explanations in there of what is meant by each area,
7 but they're designed to be used at four different
8 levels of scrutiny, and each level is increasingly more
9 specific.

10 There is the broad performance area, and there
11 are four performance areas in the criteria document,
12 and these are the broad areas that set the parameters
13 for legal services delivery. Then, within each
14 performance area, there are additional criteria, and
15 these describe, in broad terms, the desired
16 effectiveness for that larger performance area.

17 Additionally, there are indicators, which are
18 more specific declarative statements, and these are
19 factors suggesting whether the criteria are being met,
20 and then the next level of scrutiny are what we call
21 areas of inquiry, and these are basically questions
22 that are used by evaluators to ask the questions to

1 determine whether the indicators are being met and
2 whether the program is functioning under that
3 performance area adequately.

4 Basically, the value of the performance
5 criteria are that this is -- it's a road map.

6 The structure is what makes it so useful to
7 evaluators, because it takes you from the broad inquiry
8 down to a very narrow set of questions to ask. So, if
9 you're on-site, in a program, you are given essentially
10 a road map to ask in each performance area about what
11 should the program be doing, are they meeting these
12 indicators.

13 Very quickly, let me just say performance area
14 one is really what we think is the essence of the
15 performance criteria, because this area talks about
16 targeting of resources to the most pressing civil legal
17 needs, and this is a recognition that legal services
18 programs don't have sufficient funds to meet all of the
19 need, and they have to make very difficult choices
20 about the programs that they do and the clients that
21 they serve, and so, performance area one talks about
22 all of the considerations that need to go into that

1 process by a program as they determine what are the
2 most pressing civil legal needs in an area that we
3 serve and how do we target our resources to meet those.

4 Performance area two talks about the
5 relationship with clients, and it focuses very much on
6 access and how to involve the low-income population and
7 issues of how programs should be set up to ensure that,
8 in the way they deliver services, that they are doing
9 so in a way that preserves the dignity and shows a
10 sensitivity to clients and client needs.

11 Performance area three -- and I believe this
12 is the primary performance area that Howard will be
13 talking about in a little bit, and this really talks
14 about how legal services are delivered within a
15 program, and as you look through the criteria, you will
16 see it touches on legal representation, private
17 attorney involvement, and other types of services that
18 are delivered to eligible client populations.

19 And then performance area four is what I call
20 the back office of legal services, because this is
21 really touching on all of the support services that a
22 program needs, including board governments, program

1 leadership, overall management and administration,
2 financial administration, human resources
3 administration.

4 All of those kinds of issues are covered in
5 performance area four.

6 Now, the performance criteria are being
7 revised now, and at the beginning of the presentation,
8 I talked about how this was the centerpiece of LSC's
9 quality initiative, but since they were written in
10 1993, they are out of date, and it has been 12 years
11 since they were originally written and drafted, and the
12 legal services environment has seen significant change
13 and, in fact, has become a more complex environment
14 within which our programs operate.

15 In 1995, we had approximately 288 LSC basic
16 field and Native American programs, and today, we have
17 140 programs. So, obviously, we have fewer programs,
18 but we have larger programs and more complex programs.

19 We now talk about legal services in terms of a
20 comprehensive integrated statewide delivery system.

21 We talk about state justice communities, and
22 we put a responsibility on programs to not only do

1 planning for the clients in their service area and how
2 they deliver services, but we put a responsibility on
3 programs to do collaborative planning for the delivery
4 of services to clients throughout their statewide
5 service area.

6 Those are different kinds of responsibilities
7 than were in place, really, in 1993.

8 Technology has become a much more significant
9 part of legal services delivery now, and of course, our
10 programs now operate with different Congressional
11 restrictions than they did in 1993.

12 Because the delivery system has undergone
13 these significant changes, it is critically important
14 that the standards that are used to evaluate programs
15 within those delivery systems now be updated to be
16 consistent with the reality within which the programs
17 operate.

18 So, early this year, President Barnett
19 assembled a broad-based committee representing IOLTA
20 funders, legal services programs, consultants involved
21 in program evaluation and assessment, and LSC staff to
22 take on the challenge of revising and updating the LSC

1 performance criteria, and I would be remiss at this
2 point if I did not, on this record, thank that
3 committee for the work that they did and are continuing
4 to do to assist LSC in going through a very thoughtful
5 and complex process. That committee has worked
6 diligently, competently, and thoroughly to develop a
7 draft document.

8 As part of the drafting process, once this
9 committee had developed a substantial draft, it was
10 then circulated to a broader group of field
11 representatives and IOLTA programs, and in fact, the
12 chairman of this committee also saw that draft, and
13 they were given the opportunity to comment, and those
14 came back to the initial committee.

15 We considered all of those comments, and did
16 another draft of the document, and that is the draft
17 that is before you today.

18 At this time, I would like to --

19 MR. HALL: On that particular point, I know I
20 have seen the document, but is the final one in our
21 books?

22 MS. SARJEANT: Well, let me see.

1 MR. HALL: I don't think so. At least there
2 is a tab that says --

3 MS. SARJEANT: There was a tab.

4 MR. HALL: -- "Performance Criteria," but
5 there is --

6 MS. SARJEANT: Wait a minute.

7 It's not there?

8 MR. HALL: But it's not behind --

9 MS. SARJEANT: Okay.

10 Let me just check one thing, because it may be
11 coming in from Minneapolis.

12 (Pause.)

13 MS. SARJEANT: There is another draft as of
14 October 21st, and I will make sure that everybody has
15 that, because I believe they were supposed to be handed
16 out here.

17 MR. HALL: Certainly proceed, but I at least
18 just wanted you to know --

19 MS. SARJEANT: Okay.

20 MR. HALL: -- that I don't think other board
21 members have --

22 MS. SARJEANT: Okay. Well, I'll be sure that

1 everybody gets a copy of those.

2 So, I'm going to let Howard talk about how he
3 uses the performance criteria in the work that his
4 program does.

5 MR. BELODOFF: Thank you.

6 Mr. Chairman, members of the committee, it's a
7 pleasure to be here, and I'm going to attempt to
8 address performance area three.

9 Karen thought I was more suited to that, and I
10 think, after reading it, I agree with her.

11 I didn't serve on the committee and didn't
12 have any role in drafting the standards, but I have had
13 a chance to review them, and I'll give you the best of
14 my thoughts from my own perspective of 27 years or more
15 in legal services, of actually representing clients, as
16 well as in my position as a supervisor of the program's
17 attorneys, at somewhere between 20 and 25, I guess,
18 over the years, and their legal work.

19 Having done that, of course, I probably have
20 supervised well over a hundred attorneys over the
21 years, and thousands of individual cases, not only
22 major cases and major litigation, but every-day cases,

1 because we do case reviews with the attorneys, and
2 while I may not go through every file, we talk about
3 every case, and you get a feel, get a feel for how an
4 attorney handles them, you get a feel for the types of
5 cases that we do.

6 I'm not an expert in every substantive area,
7 but I've had the benefit of the staff giving
8 me -- teaching me as I go, over many years, and very
9 highly qualified staff that we have here, very
10 experienced, as you heard this morning.

11 "High-quality representation" -- that phrase
12 has been around a long time in legal services, and you
13 know, I guess we had the ABA in 1993 attempt to tell us
14 what that meant.

15 Obviously, we all knew what that meant many
16 years before that, because that is what we strive to
17 provide our clients in our communities.

18 These criteria have been called best
19 practices. They are, and I believe that it is
20 important and it is helpful and useful to have written
21 standards -- road maps, I think Karen called them,
22 guidelines.

1 I the Dean, at his noon speech -- he talked
2 about the professionalism part of our -- of being a
3 lawyer, and the law school role.

4 Well, I don't think that ends once he hands
5 you the diploma on graduation day.

6 High-quality representation, when I started,
7 you know, I guess I -- I actually went to the
8 University of Idaho, and the Dean wasn't there at the
9 time, of course, but you know, they do send you out and
10 they do send you out to take jobs with legal services
11 or private firms, and they don't really prepare you for
12 that, and so, you know, I don't recall anybody telling
13 me about high-quality representation in law school, but
14 I did have the benefit of working with very
15 highly-qualified attorneys, and I learned and worked
16 hard to learn what it takes to provide high-quality
17 legal representation, you know, and I used to say I
18 know it when I see it, and now it's good to see it in
19 writing.

20 I think that the criteria -- and I'm really
21 just going to focus on criteria number three, but each
22 one of those criterias, I believe, are equally

1 important. You cannot do one without the other, in my
2 opinion.

3 We need to have the complete picture to
4 provide high-quality representation.

5 In reviewing the format, in reviewing how it
6 was broken down, I found it easily understandable from
7 my point of view, from my perspective.

8 I recognized it as something -- that's what we
9 do. That's what we should do, you know, whether it's
10 learning the expertise in a particular legal area or
11 whether it's using technology, legal research tools,
12 how we communicate with our clients, how we maintain
13 our offices -- those are all tools. What was also
14 important to me was that there was a recognition in
15 there that all legal services programs, the 140 that
16 are present today -- we're not all alike.

17 We're all -- actually, in my experience, we
18 are completely different, and I regularly get together
19 with people from other programs, and I know we are
20 completely different in terms of how we deliver our
21 services and who we deliver our services to and the
22 funding resources that we have to deliver those

1 services, but that doesn't mean that there isn't a
2 standard that we can look to and try to emulate and
3 meet, and so, I fully support the use of these
4 standards.

5 They specifically -- what's encouraging to me
6 is they specifically recognize there is no
7 predetermined type of case that's important.

8 There is no kind of services that must be
9 provided or specific cases that must be pursued, that,
10 really, it's the framework for providing high-quality
11 legal services, how do you do it.

12 I think it's interesting that it's the Legal
13 Services Corporation and its grantees that are setting
14 standards for high-quality legal services to clients.

15 You know, as a practicing attorney, of course
16 we have our ethical rules that are governed by. Each
17 state has their own, pretty much, uniform rules adopted
18 by the ABA and adopted by our bar associations, and
19 they provide us some guidance, but these standards
20 provide us even more guidance on how we should be
21 working every day to achieve the best for our clients,
22 the best results, the best outcomes, and I must say, in

1 the most efficient manner that I know of, I have had
2 opportunities to work with large firms that have
3 assisted us in cases, and I am amazed by the resources
4 that they can bring to a case, and I'm amazed at the
5 technology that they have available to them, and how
6 much easier it can be not to share a secretary with
7 three other people, and just getting the job done.

8 But as legal services attorneys, we do get the
9 job done, and we do achieve results for our clients.

10 I don't think it's probably necessary for the
11 committee to have me go through each one of these, you
12 know, each one of the standards, and say that this is
13 how we do it. Certainly, we incorporate these
14 standards within our evaluation system. We incorporate
15 it within our staff descriptions, our job descriptions.

16 We have job descriptions for staff attorneys, managing
17 attorneys, that incorporate these things, and it is an
18 incorporation on a grantee level of many things -- the
19 training plan, the private bar involvement plan, the
20 staff growth plan -- all of these things that really
21 compose an element of a high-quality legal services
22 program, because you can't deliver high-quality legal

1 services unless you have a high-quality legal services
2 program, and you know, although the areas of
3 inquiry -- and maybe the LSC wants to use it for
4 compliance purposes, monitoring purposes, whatever the
5 word is -- actually, they are most useful to the
6 grantee, because we were recently -- Idaho Legal Aid
7 was recently monitored, but I think it was the first
8 time in 15 years.

9 So, maybe that means we're doing something
10 right, but we're not going to see LSC too often, there
11 is a lot of time in between, and we need these road
12 maps and reminders.

13 Somebody this morning brought up the question
14 of what happens after, you know, all you guys with 20
15 years of experience go, you know?

16 You know, do you take it all with you? What's
17 your plans?

18 Well, this -- these types of standards give us
19 something to pass on, to incorporate within the staff,
20 within the culture of the program, and they are not
21 static, as it's recognized in there.

22 They are evolving.

1 One of the areas that I found particularly
2 interesting, and somewhat surprised, because I do think
3 the committee did a great job here in hitting the areas
4 that need to be hit, but one of the things was I
5 happened to notice that in performance area 3A, it
6 talked about kind of being able to develop capacity to
7 do cases or provide representation that may not be
8 traditional or may not be common, and I, myself, you
9 know, really related to that in my practice on behalf
10 of clients, because in the last few years, I must say,
11 I have had to learn things that, in 25 years, I didn't
12 think I would have to learn, you know, but I did. I
13 had to.

14 You know, I had to learn about condemnation,
15 because utilities were trying to condemn, under state
16 law, which is permitted, under Federal law, Indian
17 trust lands, individually owned Indian trust lands, as
18 opposed to tribally owned trust lands.

19 You know, I had to learn about farming when
20 you're dealing with leases.

21 I had to learn about appraising when you're
22 dealing with values.

1 I knew about due process, you know,
2 requirements, and I knew about a number of substantive
3 areas, but I can tell you, not too many people came
4 into the office looking for a defense to a condemnation
5 action in Federal court.

6 So, you know, that actually -- you know, I
7 guess it could be a little scary, you know, but to me,
8 it was very -- I really enjoyed doing it.

9 I really enjoyed the fact that, you know, it
10 wasn't the same thing every day, it was something new,
11 and get in there and battle it out on behalf of your
12 clients.

13 So, I think that's important, because I think
14 that's one of the areas where legal services can just
15 keep on doing what it's doing, and we'll never progress
16 if we do that, with technology and the way the laws are
17 running -- the Supreme Court seems to be intent upon
18 changing things every year for us. We must be aware of
19 those things, we must adjust, and I think these
20 standards recognize that.

21 They are flexible enough to recognize that,
22 and perhaps we need to revisit them more often than

1 every 12 or 13 years, and I'm happy that President
2 Barnett decided that we needed to do that, and I hope
3 that they are received and given in a way to help
4 improve and ensure high-quality representation, and
5 that it's just not just the monitoring of a program.

6 For some reason, the one -- well, the one area
7 talks about areas of inquiry. I didn't know what quite
8 to make of that. You know, I guess, if I had a
9 suggestion, I would call it something else, but the way
10 it's written, you know, asking questions, looking to
11 see if the indicators, you know, are being fulfilled
12 and we're meeting the criteria -- those are all good
13 things.

14 So, from our perspective, I think it will
15 be -- from a program's perspective, from my perspective
16 as a supervisor and a practicing attorney, I think that
17 the criteria and how it's written and, I believe, the
18 philosophy behind that, I think, will help us provide
19 better representation to our clients, and we'll be able
20 to better define it for the new attorneys that are
21 coming on, and for the old attorneys to realize what
22 they need to be doing and what they will be expected to

1 be doing, and if they're not doing it, as supervisors,
2 we need to know that, and we need to make sure that the
3 staff has the resources available to them so they can
4 meet these best practices.

5 You know, we always hear about legal services
6 clients, attorneys, not being real clients, I guess
7 because we don't get paid by the clients, not being
8 real attorneys, you know, but those of us who practice
9 and those of us who know, both in the private bar and
10 work together, we know who the good attorneys are, and
11 there are plenty of good attorneys in legal services
12 that I have had the honor and pleasure to work with
13 over the years.

14 So, I'll take any questions, but I'm happy to
15 make my thoughts known to the committee.

16 MR. HALL: Thank you.

17 MS. SARJEANT: I was just going to share with
18 you -- I know that you don't have the document in front
19 of you, but just -- there are some things that I think
20 it's important to point out, that this revision puts a
21 lot more emphasis on programs' responsibility to do
22 planning of their work and then adjusting and

1 evaluating the work that they do once -- you know, it's
2 not like, once you set your priorities, that's it.

3 When you review performance area one, it talks
4 a lot about the need for ongoing planning and
5 evaluation of what you're doing.

6 Another significant change in the performance
7 criteria revision is the focus on cultural competence
8 in service delivery and a recognition that many more
9 communities have had a growth in their
10 non-English-speaking population, and then the two other
11 main changes that I wanted to point out were, as I had
12 mentioned earlier, a recognition that the criteria are
13 addressing situations now where we have larger, more
14 complex programs, which means that the issues that are
15 found in performance area four, which, again, are what
16 I consider the back office of legal services programs,
17 but it's so critical to have really strong board
18 governance and to have really strong overall financial
19 administration and management administration that many
20 programs now really need a very strong human resources
21 function within the program, that it's getting harder
22 and harder, once you get a very large program, to deal

1 with that in a less formal way. So, it's really
2 important that that function is there.

3 And then the other major change, I think, in
4 these performance criteria is the recognition of
5 technology and how it is continuing to change and
6 improve in many different ways how we're delivering
7 services.

8 So, if you had the opportunity to have the old
9 performance criteria next to the revised performance
10 criteria, you would see the change and the growth in
11 the areas that deal with technology and planning and
12 evaluation and the issues that deal with cultural
13 competence and the growth in non-English-speaking
14 communities.

15 MR. HALL: Before going to Helaine to get the
16 next steps, I think this might be a good time to just
17 open it up for questions from other board members, to
18 both of you, to see if there are any concerns or issues
19 that we'd like to raise.

20 I have a few, and one of them, you have really
21 addressed in your last remarks, which was -- because
22 when I looked at it, they certainly, you know, look

1 very clear and impressive, but not having seen the
2 other ones, I really didn't know what the major changes
3 were.

4 I assumed the technology stuff was one of the
5 major areas, but are you comfortable in the sense that
6 these four areas you have mentioned -- that is, the
7 more emphasis on planning and adjusting and evaluating,
8 the cultural competence, the back office stuff, and
9 technology -- that if one was to lay these documents
10 side by side, that that's where the major shift has
11 occurred in regards to the new criteria versus the old
12 one?

13 MS. SARJEANT: I think so in terms of the
14 categories of change, but within each performance area
15 and within each listing of indicators and areas of
16 inquiry, those have grown a lot, also, in this current
17 draft, so that we have -- as a community, we have
18 gotten more sophisticated, I think, about the questions
19 we ask, because the indicators under the performance
20 criteria are set out as declarative statements, the
21 program does X. The areas of inquiry then asks
22 questions that will lead you back to that, and I think

1 those have grown, also, in their length and in their
2 sophistication around what we ask, but I think the
3 areas that I talked about are the broad areas where
4 there were significant changes from the last draft,
5 because technology was not as much of a factor 12 years
6 ago as it is now, and certainly, there was language in
7 the prior performance criteria that talked about being
8 able -- I don't remember whether the language of
9 diversity was used, but it talked about being able to
10 serve and recognize clients from many different
11 communities.

12 Now there's very specific language in the
13 criteria around cultural competence and limited English
14 proficiency. There's also language in there that talks
15 about clients who are marginally literate, and that's
16 new language in the performance criteria, recognizing
17 that what our programs do has to be done in a way that
18 is able to be understood by the clients who are
19 marginally literate, and that's actually spelled out in
20 the criteria this time.

21 MR. HALL: Howard seems to convey this notion
22 that the field is very comfortable with these criteria

1 and that, you know, as you said, you know, they serve a
2 good purpose. I'm just wondering, were there some
3 areas of tension or disagreement in the committee
4 process?

5 MS. SARJEANT: Sure.

6 MR. HALL: Because my understanding is that
7 individuals on the committee were field
8 representatives, in addition to staff.

9 MS. SARJEANT: Yes, that's right.

10 MR. HALL: I guess I'm just trying to get at
11 what may have been some areas of tension, especially
12 when the voice of the field may be saying this criteria
13 either doesn't help or isn't capturing what we really
14 need. Do you recall or are willing to share with this
15 committee what some of those areas of tension were?

16 MS. SARJEANT: Well, I think -- and one of
17 the -- and I wouldn't even call it an area of tension,
18 because I think the process was a very collegial
19 process and that the one thread that went through the
20 entire discussion, every time we had a discussion, was
21 the mantra of not being too prescriptive, that it was
22 important that LSC did -- you know, would not set up a

1 document that said that something had to only be done
2 one way or, you know, said there was only one approach
3 to a particular delivery issue, but within the
4 group -- and I'm trying to think back through all of
5 our conversations -- there weren't what I would call
6 big battles of any kind over any of the substantive
7 areas.

8 Now, sometimes, in the group, there was a push
9 to go further in stating something than LSC was
10 comfortable in stating. For example, there were areas
11 where we talked about some of the collaboration and
12 everything, you know, and there is language in the
13 criteria now that talks about consistent with what LSC
14 programs -- you know, applicable laws and regulations,
15 so -- but there really weren't areas of contention in
16 these, and I think part of that was because they had
17 been around before. They were initially created in a
18 process, a peer review process that was created to use
19 field program staff to evaluate other field program
20 staff.

21 So, these are seen as very helpful criteria
22 and guidance to programs.

1 So, I don't think there what I would call
2 areas of contention.

3 It will be interesting -- and Helaine will
4 talk about this in terms of our next steps. We're
5 going to get another round of input, so we'll see what
6 happens, and Howard has raised one here today that, you
7 know, just the language of areas of inquiry -- maybe
8 that should be called something else, and those are the
9 kinds of -- that's the kind of input that we're looking
10 for, because our top goal with doing this is to make
11 this a document that does not sit on the shelf, that is
12 an active, live document used by programs in many
13 different ways in their daily practice, and used not
14 only by just the directors of the programs but used by
15 all of the staff in the programs, that this will become
16 something that they refer to, like they refer to their
17 court rules book, you know.

18 MR. HALL: And I guess that was one of the
19 questions I had for Howard, building on that point,
20 because you made the point that, you know, these rules
21 or guidelines become more specific and maybe even
22 better than the rules of professional responsibility

1 that all lawyers in various states are governed by.

2 My take on some lawyers in regards to the
3 rules of professional responsibility is that they look
4 at them when they are in trouble or trying to get out
5 of trouble or trying to get around some things and it's
6 not a document that really is a part of the day-to-day
7 work or something that has been internalized, and I
8 guess my question is, in the past, are these
9 performance criterias things that have really been
10 embedded in the program, or is it something that, when
11 evaluation time comes, you know, it serves as a good
12 thing to brush up on.

13 So, I'm just trying to get a sense, are we
14 really just spending a lot of time coming up with a
15 nice document, or is this something that really does
16 provide kind of guidance on a day-to-day basis for
17 programs?

18 MR. BELODOFF: Well, I think it's -- it's all
19 in the execution, I think, because I agree with you on
20 those ethical rules.

21 You know, everyone thinks they would never do
22 anything unethical, and they would only go there if

1 something kind of came up, do I have a conflict or
2 something like that, and I think the Dean is trying to
3 change a little of that in the new students, but
4 certainly, us old timers, that's probably -- you're
5 probably correct.

6 These, though, I -- these types of criteria,
7 though, are really something that, on a daily basis,
8 you deal with.

9 You deal with how you communicate with your
10 client, you know, research and preparing for cases, for
11 court, things like that.

12 The executive directors have to do those
13 things.

14 There are requirements.

15 I mean part of this is the legal services
16 requirements, so it definitely won't sit on the shelf
17 for that, but I really do think there's a buy-in here,
18 and the buy-in actually starts with drafting them, and
19 it sounds like that you did bring all the stakeholders
20 together, you are going to send it out, and you know, I
21 think there has to be some expectation, and maybe a
22 little push, that they will be something more than a

1 document sitting on the shelf.

2 But I think that's the grantees'
3 responsibility and the LSC's responsibility to make
4 sure that that, in fact, does -- that it is a live
5 document, that it is an important document, that
6 whenever we can, we incorporate them into program
7 letters or training, things like that.

8 I mean we have, for our continuing legal
9 education, not too much, but we have to take two hours
10 of ethics every three years.

11 Doesn't seem to be enough, if you ask me, but
12 yeah, maybe we need -- and I know, the way training is
13 today, it's not an LSC function anymore, unfortunately,
14 but maybe LSC can assist the NLADA when they do their
15 substantive law training, and mostly those are new
16 attorneys, to make that a component of it. They can
17 make it a component at the litigation directors
18 conference that the NLA puts out every other year, and
19 I think people will be receptive to that, because they
20 bought in -- there's very little to disagree with, as
21 far as I'm concerned.

22 Who is going to disagree with providing

1 high-quality representation?

2 I hear it all the time.

3 You know, it's our duty, we owe it to the
4 client, that's what our job is.

5 So, I don't -- by adopting them, certainly,
6 the job isn't done, it's not finished. It's never
7 finished. It has to be continually reinforced in
8 almost everything that we do.

9 I am kind of narrowing my focus to performance
10 area three, because I don't really do that much of the
11 back room stuff, but I don't see why the same thing
12 isn't true for that.

13 MR. HALL: My last question, Karen, do you
14 feel this new effort that we have put underway around
15 developing new leaders for the future, and especially
16 trying to ensure that those new leaders are
17 diverse -- is that adequately reflected in the new
18 criteria, or is that something that's too specific and
19 need not be there?

20 MS. SARJEANT: Actually, there is in the
21 criteria -- and I believe it is in performance area
22 four that talks about leadership. There is specific

1 language in the indicators and in the areas of inquiry
2 about the development of leadership opportunities for
3 staff, and I think it's important that -- and we also
4 have in here language about succession planning and the
5 need to -- for programs to be thinking about that, for
6 boards to be thinking about that, and I foresee that
7 the performance criteria -- there are other parts of
8 the performance criteria that I think will also go to
9 the need to and push to develop new and diverse
10 leadership within the legal services community, and in
11 the language that we use -- because I think this is a
12 more inclusive feeling document.

13 This is a document that, as I noted earlier,
14 very openly and frankly, you know, addresses the need
15 for cultural competence, and talks about the need for
16 diversity in boards, in staff, and so that when people
17 are looking at -- law students, new lawyers are looking
18 at legal services, they will see the kinds of things in
19 our guidance documents that speak to them in terms of
20 this is a place where I want to put my efforts, because
21 they, you know, have -- they believe in the same things
22 that I do and they have put it out there.

1 So, I think it's in there.

2 We can always do more.

3 MS. BARNETT: Your recollection is absolutely
4 right under criterion two, leadership, performance area
5 four. The indicators are the program provides
6 opportunities for the development of a diverse corps of
7 leaders and the program has an effective succession
8 plan.

9 MR. HALL: Okay.

10 MS. SARJEANT: We have to get them the latest
11 version. It's not in the books.

12 MR. HALL: Yeah. The other two committee
13 members don't have it.

14 I received mine in the mail.

15 MS. BARNETT: It wasn't in the book. We sent
16 it by a separate mailing.

17 MR. HALL: Yeah. I received mine, but I don't
18 know if others did.

19 MS. SARJEANT: Well, anyway, we will get it to
20 you.

21 MR. HALL: Well, we won't worry about that
22 right now.

1 Helaine, could you talk about next steps and
2 where do we go from here in regards to the performance
3 criteria, and also, how does the ABA process kind of
4 fit into this?

5 MS. BARNETT: First, I would like to apologize
6 for missing Karen and Howard's presentation, but I was
7 stuck in an elevator for 45 minutes. But I'm very glad
8 to be with you now.

9 Chairman Hall asked me to be prepared to
10 address the next steps in this process and the
11 relationship of LSC performance criteria to the ABA
12 standards for providers of civil legal assistance to
13 the poor. So, I'll start with our next process.

14 We have sent copies -- or so we thought -- to
15 all members of the board of directors of the current
16 draft, and of course, we hope they will tell us what
17 they think; in particular, we welcome input from this
18 committee, as well as from all members of the board.

19 After this meeting, our intention is to
20 distribute this draft to all executive directors of
21 LSC-funded programs for comments, and we will give
22 either a three-week or four-week period to comment.

1 When we receive the comments, we will then
2 reconvene the advisory group that has been the major
3 group in the drafting that includes other stakeholders,
4 some executive directors, some IOLTA funders, NLADA
5 representatives, and CLASP, to address the final
6 concerns and then to complete the revision, and it
7 would be our intention to make the board of directors
8 aware in January if that process has produced any
9 dramatic differences from the draft that you have or
10 any new major insights that we failed to consider that
11 the executive directors brought to our attention, and
12 so, that would, in essence, essentially complete this
13 process.

14 Now, with regard to the relation of the LSC
15 performance criteria to the ABA standards, I want to
16 first recognize Sarah Singleton, who is LSC's board
17 nominee, who chaired the task force that was
18 established by SCLAID to guide the revisions of the ABA
19 standards for providers of civil legal services to the
20 poor. The connection between the two are very close,
21 because it is -- the criteria draw significantly on the
22 ABA standards, and we anticipate, in fact, referencing

1 specific sections of the standards where relevant and
2 when that process is complete.

3 The time-frame on the ABA standards -- and I
4 know I will stand corrected if I am -- if this isn't
5 up-to-date information -- John Tull has been retained
6 as the principal reporter for the project, and Linda
7 Perle, of the Center on Law and Social Policy, has
8 recently agreed to join the project as a second
9 reporter, and I, myself, am a member of the task force,
10 and LSC staff have been very involved in giving, I
11 think, very helpful input to the task force.

12 The drafting of the revised standards began
13 early this year, and is expected to continue through at
14 least February of next year. There are seven sections
15 of the standards, and as of -- to date, I believe
16 drafting of two sections should be complete.

17 These are sections two and three, which
18 include some of the most challenging issues in the
19 standards, dealing with the structure of the delivery
20 system and the overall requirements for program
21 effectiveness.

22 Therefore, the drafting and review of these

1 sections has taken probably more time than we had
2 originally anticipated, and it is hoped that the
3 remaining portions of the standards can be drafted more
4 quickly.

5 The project schedule calls for all drafting
6 and public comment to be completed by May of 2006, and
7 for the revised standards to be submitted to the ABA
8 house of delegates in August of 2006.

9 Throughout this process, there have been
10 lengthy telephone conference calls chaired by Sarah
11 Singleton, as well as public hearings.

12 In fact, I think there was just one in Chicago
13 earlier this week, and there is going to be the next
14 one in Orlando during the NLADA annual conference, so
15 that there is an opportunity at many different times,
16 in addition to just commenting on the website, for
17 members of the public and interested stakeholders to
18 participate in the process of considering issues for
19 revision. There is a web page that can be accessed,
20 and while I think we point out -- and I apologize if
21 I'm repeating something Karen said at the outset, but
22 in our introduction, we point out what distinguishes

1 the criteria from the standards, but on the other hand,
2 they very much are interrelated in major areas, and so,
3 I would think that would be the answers to the
4 questions you asked me to address.

5 MR. HALL: Will there be an opportunity at
6 some point before May 2006 for this committee to be
7 given a chance to at least have a report from that
8 committee, not a thorough assessment of it, and I
9 recognize that we are not in any position to approve or
10 disapprove, but since they have such a tremendous
11 impact on the work of LSC, it might be good if we could
12 at least see what that work product has produced.

13 MS. BARNETT: Our intention was to speak to
14 Sarah Singleton and to see whether or not -- I believe
15 we had thought, at the April meeting of this board, to
16 have a presentation as to where they are on the
17 standards.

18 I don't know, Sarah, if you'd like to address
19 that directly.

20 MS. SINGLETON: Mr. Chairman, I would be glad
21 to agree that someone from the task force, myself or
22 one of the various other members who routinely attends

1 your meetings, will give this committee a report in
2 April, and hopefully by that time, the ABA standards
3 will be in fairly final form, at least where they're
4 out for public comment.

5 We can get them to you in advance of the April
6 meeting, and we're more than happy to receive any
7 comments that you have, and I look forward to looking
8 at the criteria that you have developed, Karen, and
9 Karen often sits in our meetings. So, hopefully
10 there's not going to be any big disconnect between the
11 two of them.

12 MS. BARNETT: And in fact, we have overlapping
13 committee membership.

14 John Tull sits on our advisory committee,
15 so --

16 MS. SINGLETON: Oh, good.

17 MS. BARNETT: -- just for the very reason
18 that -- I think we both have been aware of the issues
19 that need to be addressed.

20 MR. HALL: That's fine. We would like to have
21 that in April.

22 MS. SINGLETON: All right.

1 Thank you.

2 MR. HALL: We can decide who should do it, but
3 I'd like to have that opportunity.

4 MS. SINGLETON: I'll undertake to make sure
5 that that happens in April.

6 Thank you.

7 MR. HALL: Thank you, Sarah.

8 Any questions for Helaine by any of the board
9 members?

10 Any other questions for any of our other two
11 presenters?

12 Ernestine, are you still with us?

13 MS. WATLINGTON: Uh-huh.

14 MR. HALL: Do you have any questions?

15 MS. WATLINGTON: No. I've worked with them
16 for a long time, but I've gotten a better explanation
17 of understanding it somewhat more today than ever
18 before.

19 MR. HALL: Good.

20 MS. WATLINGTON: I've really been listening.

21 MR. HALL: Good, glad, glad you're there.

22 Well, thank you both for a very thoughtful and

1 insight presentation, and I appreciate it.

2 MR. BELODOFF: Thank you.

3 MR. HALL: At this time, we would move to
4 public comment, and especially if there is any public
5 comment that we've just been discussing, the
6 performance criteria, or on any other topic, we would
7 open the floor for that now.

8 None?

9 Is there any other business to be brought
10 before the Provisions Committee?

11 Okay.

12 I would consider a motion to adjourn.

13 M O T I O N

14 MS. PHILLIPS: So moved.

15 MS. WATLINGTON: Second.

16 MR. HALL: The meeting is officially
17 adjourned.

18 Thank you.

19 (Whereupon, at 2:35 p.m., the committee
20 meeting was adjourned.)

21 * * * * *