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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
PROVISION FOR THE DELIVERY
OF LEGAL SERVICES COMMITTEE

Friday, April 25, 2008
1:37 p.m.

The Marriott Hotel
3233 Northwest Expressway
Oklahoma City, Oklahoma

COMMITTEE MEMBERS PRESENT:

- David Hall, Chairman
- Jonann C. Chiles
- Thomas A. Fuentes (by telephone)
- Herbert S. Garten
- Bernice Phillips
- Sarah M. Singleton
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Lillian R. BeVier
- Michael D. McKay
- Thomas R. Meites

1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, President

Victor M. Fortuno, Vice President for Legal Affairs,
3 General Counsel, and Corporate Secretary

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

Patricia D. Batie, Manager of Board Operations

5 Mattie Cohan, Senior Assistant General Counsel

Jeffrey E. Schanz, Inspector General

6 Ronald "Dutch" Merryman, Assistant Inspector General
for Audit, Office of the Inspector General

7 Joel Gallay, Special Counsel to the Inspector General,
Office of the Inspector General

8

Linda Perle, Center for Law & Social Policy (CLASP)

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

10 Gary A. Taylor, Executive Director, Legal Aid Services
of Oklahoma

11 Colline Meek, Executive Director, Oklahoma Indian
Legal Services

12 Levon Henry, Chairman, Native American Indian
Legal Services (NAILS) and Executive Director,
13 DNA-People's Legal Services, Inc.

Steve Hager, Litigation Director, Oklahoma Indian
14 Legal Services

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

2 (1:37 p.m.)

3 CHAIRMAN HALL: I'd like to call the meeting
4 to order and welcome everyone here, especially our
5 committee members and other board members who are
6 present. And one of the committee members, Tom
7 Fuentes, is on the line and will be joining us via
8 telephone. Welcome, Tom.

9 MR. FUENTES: Thank you so much, David. I can
10 barely hear you. Is there any chance of getting the
11 speaker closer to --

12 CHAIRMAN HALL: Is that better?

13 MR. FUENTES: That's a little better, yes.

14 CHAIRMAN HALL: Okay. We'll keep monitoring
15 it and see if that works.

16 MR. FUENTES: That's very kind of you. Thank
17 you so much.

18 CHAIRMAN HALL: The first item for the
19 committee is an approval of the agenda. Could I get a
20 motion?

21 M O T I O N

22 MS. CHILES: I move to approve the agenda.

1 CHAIRMAN HALL: Is there a second?

2 MS. SINGLETON: Second.

3 CHAIRMAN HALL: All in favor?

4 (A chorus of ayes.)

5 CHAIRMAN HALL: Any opposed?

6 (No response.)

7 CHAIRMAN HALL: Thank you. The agenda stands
8 approved.

9 We next need to approve the committee meeting
10 minutes of January 25, 2008. And I also want to take
11 this time to thank committee member Sarah Singleton for
12 serving as chair for this meeting because I was not
13 able to be here at that time. So thank you, Sarah, for
14 doing that.

15 Could I get a motion to approve these minutes?

16 M O T I O N

17 MR. GARTEN: So moved.

18 CHAIRMAN HALL: Second?

19 MS. CHILES: Second.

20 CHAIRMAN HALL: All in favor?

21 (A chorus of ayes.)

22 CHAIRMAN HALL: Any objections?

1 (No response.)

2 CHAIRMAN HALL: It is now approved.

3 Getting those things out of the way, we have a
4 full agenda of different presentations. And we will
5 start with a staff update on the private attorney
6 involvement action plan. And Karen, I assume you are
7 presenting that?

8 MS. SARJEANT: I will, thank you. Karen
9 Sarjeant.

10 CHAIRMAN HALL: Welcome.

11 MS. SARJEANT: Thank you. Vice president of
12 programs and compliance. And I just wanted to give you
13 a very brief update on some activities. If you look at
14 page 7 of the president's report later on, you will see
15 many things listed there. But I wanted to just point
16 out a couple of things, and then share a new idea with
17 you that we have.

18 We continue to be pleased by the number of
19 resolutions that our programs have passed -- we're now
20 at 85 -- in support of enhanced pro bono. We are
21 continuing to build content on our website, the library
22 resource website. And since our last board meeting,

1 when President Barnett and I attended the California
2 Project Directors Association, a program's response to
3 the PAI program letter was shared with President
4 Barnett in which the program took every part of the
5 letter and wrote a document showing how they have done
6 different activities in their program in support of
7 what was suggested in the letter -- some that they were
8 already doing, some new things that they were putting
9 in place.

10 So we think this is something that is very
11 significant that we want to share on our resource
12 website for other programs to model what they are doing
13 on.

14 A couple of other points. We're pleased that
15 the 2009 request for proposals will require a
16 submission of a separate private attorney involvement
17 plan, and we believe that this will help programs
18 better focus on what they are doing and not doing. And
19 it certainly will help us improve our oversight and
20 assessment of program activities related to private
21 attorney involvement.

22 You will also recall that there was, for a

1 period of time, a joint activity underway with the ABA
2 which was focused initially on awards for pro bono.
3 But it is now focused on some type of joint
4 celebration. So we still thought that the issue of
5 recognition, and LSC making a statement about
6 recognition of pro bono attorneys, was important.

7 So our PAI focus team in the Corporation has
8 come up and has been brainstorming on a new idea. And
9 that's what I'd like to share with you today. We've
10 had them thinking about a national pro bono honor roll.
11 And this is something that would be an award of some
12 type.

13 As you know, at the board meetings, as you
14 will do this evening, you will recognize as the
15 national LSC board local private attorneys who have
16 done significant pro bono activities at the local
17 level. And you will give them your applause and honors
18 for having done their work.

19 In any year, the LSC board will probably see a
20 minimum of three programs. And we know that many of
21 our programs have very dedicated, very steadfast,
22 willing private attorney partners who should be honored

1 in some way. And so we have asked our staff to think
2 about how we might create some kind of an award from
3 LSC and from the board, and we thought something along
4 the lines of a national pro bono honor roll to
5 celebrate these private attorneys.

6 So we're in the early stages of considering
7 what that might look like -- what the selection
8 criteria might be, what the role of the local programs
9 would be, what the role of the LSC board would be, the
10 role that you might want to play in this, and what the
11 recognition should be in terms of what would be a very
12 meaningful recognition from LSC to honor those local
13 attorneys who, on an everyday basis, do and go above
14 and beyond in working with local programs.

15 These are some of the preliminary thoughts we
16 have. We wanted to share that idea with you to get
17 your reaction to it. And if it is a positive reaction,
18 we will plan to continue to develop a plan and come
19 back to you in the August meeting with more details
20 filled in on that.

21 CHAIRMAN HALL: So you want us to discuss that
22 now, or you want to go ahead with other --

1 MS. SARJEANT: Well, actually, that's all of
2 the update I have on PAI because there is in the
3 president's report a lot of description of what we're
4 doing.

5 CHAIRMAN HALL: Well, just my reaction. I'd
6 certainly be interested to other board members. I
7 think the notion of a national pro bono honor roll is
8 an exciting idea, and I would certainly encourage you
9 to continue to develop it.

10 My one question is: Because there is this
11 other activity that's going on with the ABA of trying
12 to create some type of honor or some nationwide
13 recognition for pro bono, do you see this as being
14 separate from that effort? In conjunction with that
15 effort? Or have you even gotten that far yet?

16 MS. SARJEANT: It's my understanding that the
17 joint work that we are doing with the ABA is to look
18 at some type of celebration of pro bono, but not
19 necessarily an awards event or an awards program. So
20 this would be done by LSC, but certainly it would just
21 support the idea of pro bono nationally.

22 CHAIRMAN HALL: Other reactions?

1 MR. GARTEN: Herb Garten here. I think it's a
2 wonderful idea, and it follows through on the original
3 concept that we had and proposed to the ABA pro bono
4 committee. And they concluded they wanted this
5 celebration. We had offered to do it jointly with
6 them, and they thanked us. And in fact, the chair said
7 that our interest had caused them to have a jump-start
8 on something they had been thinking about for some
9 time, and that was this national celebration.

10 So I think we ought to proceed. I think it's
11 something that should be given national recognition by
12 Legal Services Corporation, and I'm all in favor of it.

13 CHAIRMAN HALL: Okay. Any other reaction by
14 committee members or other board members?

15 (No response.)

16 CHAIRMAN HALL: Well, I think you got a green
17 light from us.

18 MS. SARJEANT: Thank you.

19 CHAIRMAN HALL: So I look forward to hearing
20 more about how it's being developed.

21 MS. SARJEANT: We will come back to you with
22 much more detail. Thank you.

1 So that actually is the extent of the PAI
2 update. And then I think my colleague is going to --

3 CHAIRMAN HALL: But any other questions on PAI
4 in general before we move to the next topic?

5 (No response.)

6 CHAIRMAN HALL: All right. Thank you, Karen.

7 Staff update on the technology criteria for
8 legal aid offices. Welcome.

9 MR. JEFFRESS: Thank you, Mr. Chairman. This
10 is Charles Jeffress. I'm happy to give you this update
11 today on the matter which you all heard a little about
12 at the January meeting. And we have taken a number of
13 steps since then.

14 This relates to the technologies that should
15 be in place in a legal aid office today. We began this
16 conversation back in September of last year, as you
17 will recall, with a conference of technology experts
18 from the access to justice community. We had our
19 grantees there, of course; we had technology experts;
20 we had folks from the private sector; we had judges
21 there; we had people from foundations, all whom were
22 familiar with the type of technologies that would be

1 helpful and necessary for operating a legal aid office
2 today.

3 That group produced a document that was
4 entitled "Technologies That Should Be in Place in the
5 Legal Aid Office Today." We had an internal task force
6 at LSC to review that document and refine it. We then
7 sent the document out to a representative group of
8 legal aid programs around the country. We drew
9 executive directors from large programs and small
10 programs, from programs that had sophisticated
11 technologies to programs that had lesser investment in
12 technologies, trying to get a sampling from different
13 executive directors as to the impact that this
14 statement of technologies would have on their programs
15 and whether they seemed appropriate or not.

16 After feedback by that advisor group of EDs,
17 the internal group at LSC did some further refinements
18 to the baseline or to the technologies that should be
19 in place in a legal aid office today. And that's the
20 information that's in your board book. It starts on
21 page 11, for those of you who wish to follow along.

22 This committee at its January meeting

1 expressed some concern about how would this list of
2 technologies that should be in place in a legal aid
3 office today, how would it be used? What was the
4 impact of LSC producing such a document?

5 Let me make clear at the outset that this
6 document is not to be used for funding decisions. This
7 is not a document that will make a determination
8 whether people get funded or not. Rather, it is the
9 statement of what experts in the field and
10 practitioners in the field believe are technologies
11 necessary to operate a legal aid office today.

12 Our expectation, after talking with EDs across
13 the country, is that the vast majority of legal aid
14 programs have these capacities in place today; either
15 on their own, through contracting an outside vendor, or
16 through a partner in the access to justice community,
17 that the vast majority of programs have these
18 capacities in place today.

19 However, in recognition of the concern the
20 board had about what impact this might have on
21 programs, what we have decided to do is at the same
22 time that we distribute this list of technologies to

1 executive directors, to also distribute a survey to
2 them which asks for their feedback on their program,
3 given this set of technologies. What is it that they
4 have? What is it they don't have? What comments do
5 they have on LSC stating that these are the
6 technologies that should be in place today?

7 So in your board book you have the list of
8 technologies. You have a copy of the survey that we're
9 planning to use with the executive directors. And you
10 have a letter of introduction, a cover letter, if you
11 will, to the two documents that explain what they are.

12 It is our intent to send this package out to
13 executive directors in May and have on the agenda for
14 our all executive director conference in June a
15 discussion of any questions they have regarding this
16 document and the survey response to it, giving them a
17 chance to come to Washington and ask their questions,
18 get the questions answered, before they have to respond
19 to the survey. We'll ask for the survey to be returned
20 following the executive director conference.

21 So by this summer we expect to have both now
22 this list of technologies that are appropriate

1 for -- that should be in place in a legal aid office
2 today, as well as a comprehensive survey of our
3 grantees so we know to exactly what extent this is a
4 stretch or whether in fact people already have this
5 technology in place. That will give us an opportunity,
6 if we so wish, to further modify the chart after we see
7 the response to the survey.

8 It would be our intent then that
9 having -- with a final refinement necessary of the
10 technologies that should be in place, to then ask
11 grantees as a part of their application for the 2010
12 grant year, which the application would be made in
13 2009, to provide a technology plan, just like they
14 currently provide a private attorney involvement plan
15 as to what their plans are for involving private
16 attorneys. We would ask for a technology plan that
17 describes how they are investing in technology, how
18 they are keeping in current, and if in fact they lack
19 some of these technologies that are important, what
20 their plans are for acquiring these technologies.

21 It may also be that because of the way their
22 program is structured and the services they provide,

1 there are some of these technologies they don't need.

2 And they would be free to say that as well.

3 But that's our plan at this point. We have to
4 describe the technologies. We're going to ask people
5 how much of these they already have. Is it a stretch
6 to acquire the rest of these? We will make some final
7 refinements, and then we will begin asking on a regular
8 basis as a part of our application for grants and
9 renewals for people to have technology plans and
10 describe how they will be keeping their technology
11 current.

12 CHAIRMAN HALL: You may have covered this last
13 time and I apologize since I wasn't here. But is there
14 any intent that if there are programs that aren't where
15 they should be and who you would conclude after the
16 survey really do need this, is there any attempt on our
17 part or on management's part to try to assist them in
18 addressing those needs? Or do we just use it or take
19 the position that if it's clear that they do need it
20 and they don't have it, it's up to them to come up with
21 it or to give you a plan for how to acquire it?

22 Is this an area where either additional

1 funding or us working with industry or other ways on a
2 national level might be able to address those needs in
3 some ways?

4 MR. JEFFRESS: The funding that we have for
5 technology is through the TIG grants, and we have
6 targeted that for innovative applications and not for
7 baseline.

8 CHAIRMAN HALL: Sure.

9 MR. JEFFRESS: So we don't anticipate using
10 the TIG money for this. On the other hand, if there
11 are programs that don't have this technology and can
12 see how it would help them and how it would be an
13 advantage to them, I would see our providing whatever
14 assistance we can in terms of this is how other people
15 have done it. Here are some ways you might do it
16 efficiently. Or here's a work-around that will give
17 you an alternative.

18 We do have our technology staff in the TIG
19 program. We do expect to use their expertise in
20 providing advice and guidance to grantees if they need
21 it on ways to develop their technology.

22 But it would be in the line of continuing to

1 encourage them to achieve this level of technology and
2 helping them figure out what the best way to do it
3 would be.

4 CHAIRMAN HALL: Yes. I guess I was wondering
5 if one could go a step farther than that, which is that
6 if you had ten grantees that were in similar types of
7 positions or situations and there were either funding
8 opportunities out there or corporations or high tech
9 organizations that produce this stuff, whether if the
10 national office developed a proposal to try to get
11 funding from those organizations; that that might
12 create greater leverage than, say, if each organization
13 were trying to address that need on its own.

14 It may turn out that that's not the scenario,
15 that you may be talking about one or two grantees. But
16 I'm just -- if you're going to survey and get all of
17 this information, I guess my only concern is do we then
18 just leave it up to them to try to -- we could give
19 them advice about what others have done to get it. But
20 do we try to leverage the national profile that we have
21 to try to get some sources or tap into some sources
22 that they might not be able to even get on their own?

1 MR. JEFFRESS: It strikes me as a very good
2 suggestion, something that we could pursue. As an
3 example of some of the things that have been done in
4 the past where we've tried to help people upgrade their
5 technology, we have looked for opportunities where we
6 might assist in a purchase program where if there are a
7 number of people purchasing the same thing, maybe we
8 can help them negotiate a price break on something.

9 At times there will be one provider that can
10 provide the service by a web hookup, by a statewide
11 website, so each grantee then doesn't have to invest in
12 it. You can do it one time and multiple grantees can
13 make use of the technology.

14 So we'd be looking for those opportunities, I
15 think, as well as your suggestion is a good one, that
16 we actually, if there is a significant need in the
17 community, assist them in looking for funding sources
18 to fund that.

19 CHAIRMAN HALL: Other? Yes, Tom?

20 MR. MEITES: I've been thinking while David's
21 been asking his questions. And I suppose as
22 background, an observation that was pretty obvious, but

1 took me a while to get, is that there are rich states
2 and poor states in the union. And the poorer states
3 lack the ability, I think, to raise money to meet
4 critical infrastructure needs.

5 The survey you're going to conduct in some way
6 parallels the justice gap survey in that you're going
7 to ask our grantees what they have. And given LSC's
8 wealth of experience, you can create a baseline of what
9 they need. So it seems to me that if you put those two
10 together, you can create a shortfall analysis of those
11 of our grantees that do not meet the baseline, what you
12 consider not optimum but adequate technology; put a
13 dollar figure on that; and use that quantified figure
14 for exactly the kind of -- to give our grantees that
15 figure to use it as a selling job, not to raise money
16 because some of the poorer states we've been in just
17 can't raise money, but to go to some of the hardware
18 and software providers with the hard facts of what they
19 need, something they can't do themselves. Since I
20 think they lack the information to either develop the
21 baseline or quantify what they're lacking.

22 So I would suggest that you consider taking

1 the next step once you have the survey, create a
2 baseline, and turn it into dollars needed to bring
3 those grantees that need more up to the minimum.

4 MR. GARTEN: Herb Garten. My recollection is
5 that we had a discussion about aspirational versus
6 mandatory. And we wanted to, I think -- at least I
7 did -- wanted to make it clear that this was not a
8 mandatory situation.

9 So I have a suggestion. Instead of saying, as
10 a heading, technology that should be in place in a
11 legal aid office today, why don't you rephrase it as
12 that is recommended to be in place, and especially
13 since you're doing this survey. This isn't a final
14 document.

15 MR. JEFFRESS: The title that's here came
16 directly from the September conference that we had of
17 our experts in technology representing our programs as
18 well as others. And it was a statement from those
19 folks that they really thought if you're going to
20 provide good services today, you should have these
21 technologies. So that's where it came from.

22 But our intent is not to make it mandatory,

1 and that your point is perhaps if we revise the title,
2 it might be clearer that this is not a heavy-handed
3 requirement that people have to comply with. I
4 understand your intent of that. I appreciate that
5 recommendation.

6 CHAIRMAN HALL: Any other questions? Tom, are
7 you there hearing, and do you have any questions?

8 MR. FUENTES: I'm here, and I'm having a
9 little difficulty hearing the speakers other than
10 yourself, Dave. But I am able to get most of it.
11 Thank you. I have no questions.

12 CHAIRMAN HALL: Okay. We'll ask our speakers
13 to try to move the mike a little closer in the future
14 so Tom can hear.

15 If there are no other questions, then we'll
16 move to our -- thank you both, Karen and Charles.

17 And our next agenda item is some presentations
18 on Native American delivery and funding. And we have a
19 number of representatives who are going to come forward
20 and present on that particular topic. And Karen, are
21 you doing the honors of introductions?

22 MS. SARJEANT: Well, I'm actually going to in

1 a few minutes let them introduce themselves because
2 they come with quite a bit of experience and will have
3 a lot to tell you.

4 But I just wanted to set the session up in
5 terms of at the January board meeting, we had a very
6 brief presentation on Native American funding and
7 delivery, and talked primarily about the Native
8 American pre-conference that was held in November 2007.
9 And the board was very interested in this issue and
10 asked for some additional information.

11 At that meeting, in which primarily almost
12 all of our LSC-funded Native American programs
13 participated, we had a very informative discussion
14 about the needs and the funding issues related to
15 Native American legal services delivery.

16 And the goal of that meeting was to develop
17 clearly articulated rationales and information to
18 support the possibility of additional funding and to
19 determine how to award additional funding if it were to
20 become available.

21 During that session, there was a lot of
22 discussion about what is, I think, considered kind of

1 the seminal paper on legal needs related to Native
2 American populations. And that was a paper entitled,
3 "Legal Needs and Services in Indian Country," by Eric
4 Dahlstrom and Randolph Barnhouse. And we agreed with
5 the National Association of Indian Legal Services
6 Programs that what needed to be done was to have that
7 paper updated.

8 NAILS took that on as a task that they were
9 going to do, and in December or January came back to
10 the Corporation having done some work to update the
11 report. And there were still some areas that we felt
12 we needed additional information on in terms of
13 the -- so that we weren't in a position of just talking
14 anecdotally about the increased need. So we asked them
15 to go back and do some additional work.

16 More recently, the organization sent to LSC,
17 presented to LSC, a proposal for updating some of that
18 information. And our first reaction was unfortunately,
19 we don't have the money to support that. They asked us
20 to take a second look at that decision and we did, and
21 we determined that there are some areas of the
22 information they were going to present and have updated

1 by a research firm that would be helpful to us in
2 making decisions about what the increased need is, what
3 the worsening conditions are. Has the population
4 grown? All of those issues.

5 And so we had decided that we would sit down
6 with them again -- because we have continued to talk
7 with NAILS -- and look at the specific data request and
8 determine which ones we felt we really needed to help
9 support any funding decision we would make.

10 And what was given to us today, they have done
11 some additional work with the research firm and have
12 expanded the data that they would like to see used. We
13 haven't had an opportunity yet to really sit down with
14 them and go over that, but we think that it is the kind
15 of information and that the continued discussions with
16 NAILS will bring us to a point where we're all in
17 agreement about what information we need to move this
18 forward.

19 Most importantly, we believe that we have the
20 time to get this right, that this is not something that
21 has to be done in the next month. But we will continue
22 to work on it so that we are in a position to take a

1 look at the funding should there be some money made
2 available, some significant increase in basic field, in
3 which we could be talking about looking at making
4 additional funding available to the Native American
5 programs.

6 So I believe that what our next steps will be
7 at the Corporation is to have a meeting with NAILS to
8 go over this latest proposal and figure out what
9 information it is we would be able to support the
10 funding for in terms of developing that information.

11 The board had also asked for some information
12 on gaming revenues and how that was affecting legal
13 services. And I believe that NAILS is here today to
14 talk to you not only about some of the things that they
15 have learned in the updating they've done so far, but
16 also to share some preliminary information on the
17 gaming issue.

18 So at this time I would like to introduce or
19 re-introduce to you Levon Henry, who is the chair of
20 NAILS and also the executive director of the DNA
21 program; and Colline Meek, who you all met this
22 morning, who's the executive director of Oklahoma

1 Indian Legal Services; and Steve Hager, who is the
2 litigation director. So they will be speaking with you
3 about the work that NAILS has done so far in starting
4 to re-look at updating the information that would help
5 support LSC making a very deliberate and
6 well-documented case for increased funding.

7 MR. HENRY: Thank you, Karen.

8 MS. SINGLETON: You need to put the microphone
9 right by your mouth.

10 MR. HENRY: As Karen had said, I am Levon
11 Henry. I'm actually the chair of NAILS, chair of the
12 steering committee; also executive director for
13 DNA-People's Legal Services. And contrary to rumor,
14 DNA is not down in Texas doing any kind of testing this
15 week. So one of the things that I'd like to mention
16 first, before we get started, is just to let you know
17 where I'm coming from because I think that's important.

18 I've been with DNA as executive director for
19 about five years now. And before that, I started out
20 as what we call a tribal court advocate, which is a
21 tribal member who is licensed to practice in tribal
22 court. And that's the limitation.

1 I went on to law school, came back with DNA as
2 a staff attorney, and now am executive director. So
3 I've been with DNA for quite some time, and I've always
4 worked on the reservation in Navajo with one exception,
5 when I was in Montana working for other tribes.

6 I have lived on the reservation. I am a
7 member of the Navajo tribe. I am also half Zuni on my
8 father's side. And when people ask, what changes have
9 you seen since you've been out there on the
10 reservation, in all the time that I've been out there
11 and working out there, and I say, none; in the 30-plus
12 years that I've been working there, I have seen no
13 significant changes other than maybe a few fast food
14 places and that's about it.

15 The economy has not changed at all from since
16 I was a kid other than to get more expensive while
17 income has stayed relatively the same. And so that is
18 the population that we work for, that is the population
19 that I live in, and that is the population that I am a
20 part of.

21 And so when I come to you and say I am the
22 chair of NAILS, that comes with something other than

1 just being a legal aid attorney, but also comes from
2 somebody who lives with the people who are my
3 relatives, who I work closely with, and who I really
4 care about deeply.

5 One of the things that was mentioned, that
6 Karen had mentioned just a few minutes ago, was a
7 meeting that we had down in Tucson in November. That
8 meeting was actually a culmination of a number of other
9 meetings that we've had both with Legal Services and
10 with our steering committee and the larger NAILS
11 organization. And it was one of those things where we
12 made a request to Legal Services Corporation because of
13 the need that we saw out in our area, Indian Country.

14 It was a request that was part of the
15 anticipation of the increase that Legal Services had
16 expected over the past year. And so we understand that
17 that increase is not there, and we understand that it
18 may not come at all. But the fact remains that we
19 still need a certain level of funding to maintain our
20 services, or at least in some cases to provide actual
21 services to the Indian population that we try to serve.

22 And so the request was made for two things.

1 One is for sustainable level funding for our smaller
2 programs that are out on the reservations that are
3 trying to do the work. The other was just an increase
4 to be shared by all Native American programs so that we
5 can continue to provide those services.

6 Obviously, the big question is why. Why do
7 you need more funding? And Karen had mentioned a
8 report that was done back in 1998, "Legal Needs and
9 Services in Indian Country," done by Eric Dahlstrom and
10 Dolph Barnhouse. This is a report that was put
11 together -- a lot of what is in here is still relevant
12 today and is still applicable today.

13 What we wanted to do with the NAILS program is
14 to put together an update of that report, and that's
15 what we have done. We have pulled together and we put
16 together a draft update of this report. A lot of the
17 things that are in that update follow what is in the
18 original report. Some of the things that we talk about
19 are the barriers of access to justice, the poverty that
20 is out there.

21 And I understand that everybody in Legal
22 Services is saying -- it's almost like a competition

1 now. Who is the poorest of the poor? And everybody
2 that comes, perhaps, to Legal Services are saying -- or
3 come to any kind of governmental funding source are
4 saying, we are the poorest. And it's a competition
5 actually to say who is the poorest.

6 But one of the things that we put in the
7 report are some of the challenges that we have in terms
8 of economic development. Like I said before, I have
9 seen no changes in economic development since I've been
10 living out there.

11 The other thing is the language or the
12 barriers that are produced by language. As you may
13 have heard this morning from Colline, we have a number
14 of tribes in our service area. Many of them speak
15 different languages. In my own area, we have seven
16 tribes that each speak a different language. There
17 are also cultural considerations that we have to be
18 aware of.

19 The other thing is geographic barriers.
20 Colline had mentioned the travel that her attorneys do.
21 And you look at some of the travel that is in any of
22 the Indian legal services programs, and a lot of their

1 funding goes toward travel just because we have to get
2 there to serve our people.

3 One of the other issues that was mentioned is
4 unmet need in Indian Country. This morning Colline
5 talked about the American Indian Probate Reform Act.
6 And she also talked about the trust management in
7 relation to allotments and allotment owners and tribal
8 court practice.

9 We realize that when we say these things, that
10 some people don't really understand what we mean when
11 we talk about Probate Reform Act or trust mismanagement
12 or tribal court practice. All of the attorneys that we
13 bring in, at least to my program, are from the East
14 Coast or the Northwest, somewhere from outside our
15 service area.

16 And to get them acclimated to what we do takes
17 at least a couple of years so that they understand that
18 they can't be sitting in a room where they're talking
19 to a client and expect that client to give them the
20 answers right away. It's one of those things that
21 people have to learn after a couple years, that there
22 are certain ways to do things when you're talking to

1 Native American clients.

2 Even in terms of trust mismanagement, when
3 Colline was talking about that issue this morning,
4 trying to get that idea across to our clients -- when I
5 talk to you and talk about trusts, and maybe bankers'
6 trusts or any kind of trust relationship, you sort of
7 have an idea already of what that means.

8 In talking with our Native American clients,
9 it's hard for them to understand exactly what that
10 means and how that affects them when they're trying to
11 get their funds from the government. It's one of those
12 things that -- recently the way I explained it to them
13 is that what they understand in their culture is that
14 sheep are important to them.

15 And I told them that every morning the
16 shepherd would take that flock of sheep out, and he
17 would count how many sheep are there, how many goats,
18 how many lambs. And I said, if you as the owner go and
19 talk to your shepherd and you ask your shepherd,
20 how many goats are there, he would tell you the exact
21 number. How many sheep? He would tell you the exact
22 number. How many lambs? He would tell you the exact

1 number.

2 Then I told them that if you had the federal
3 government, who was your shepherd, they could not
4 tell you how many sheep you need. They wouldn't even
5 know that you had any lambs. That's what we're talking
6 about when we're talking trust mismanagement. And
7 that's something that they understand.

8 So putting those things into events or
9 practices that they understand is how we have to work.
10 So when we're talking about cultural barriers or the
11 needs of Indian Country, that's what we're talking
12 about.

13 One of the issues that came up that we as a
14 steering committee talked about -- and this was again,
15 I want to say, hotly debated within our steering
16 committee -- is the gaming issue. And it came up, as
17 Karen had mentioned, in a question at the last board
18 meeting: What about gaming dollars?

19 Everyone who is interested is talking about
20 the revenue that is coming in from gaming. And
21 everyone thinks that this is a large source of funds
22 for tribes. But when you really get down to it and you

1 put it under a microscope, as we have done -- we have
2 done a preliminary report; Mr. Hager and one of our
3 colleagues on the steering committee put together a
4 preliminary report on gaming.

5 And one of the things that they do find that
6 is at least well-known to us who work with tribes and
7 who work on the reservations is that a lot of times,
8 the gaming dollars are not there. The gaming dollars
9 go toward building tribal infrastructure, but before
10 that, they often have to go back to pay what you might
11 say the mortgage that the Harrah's or the Bally's
12 casino have to pay off, that tribes have to pay off to
13 them. And so very little is let to be distributed to,
14 say, Indian Legal Services.

15 One of the things that we've also found out is
16 that there's an ethical issue that we have to deal with
17 if we are going to ask the tribes for funding from
18 gaming revenue. And that is one of those things that
19 we have to get around in terms of lawyers doing work
20 for tribal members where we get money from the tribe,
21 and where you're talking about a conflict of interest
22 or where you're talking about ethical representation of

1 our clients if we were to get that money.

2 Those are just some of the issues that we've
3 come across. And one of the things also is that a lot
4 of the dollars are not there. My own tribe, the Navaho
5 Nation, does not have any kind of gaming right now.
6 They are just starting. And we're talking about one of
7 the largest tribes in the country who -- the people
8 said, we do not want gaming on our reservation. But
9 somehow, the government found a way to do it. And so
10 it's a big issue for people in Navajo.

11 And finally, as Karen had mentioned, that we
12 had been talking to -- in talking about these two
13 reports that I have here, one done in '98 and the draft
14 update that we put together recently, one of the things
15 that we talked about again within the steering
16 committee is how do we put this together so that the
17 material is understandable and that they each relate to
18 each other and so they build off of each other?

19 And one of the things that we talked about, we
20 needed more demographic information. And I really have
21 to say that the programs that helped us on this update
22 really worked hard. They put a lot of effort into it,

1 they put in a lot of time, and they put in a lot of
2 their own resources from their programs to try and put
3 this together. And so everybody came together and made
4 a contribution to put a really good draft together.

5 But we needed more information, so we talked
6 to a research firm in Phoenix, Arizona, who understood
7 the nuances of Indian Country. And we asked them and
8 showed them our report and said, what can you do to
9 help us? How can you help us improve this report so
10 that it could be really helpful, not only to LSC, but
11 also to Native American programs?

12 And that's what we had recently, is a proposal
13 from them on how we can do that. And that is what
14 Karen had just mentioned earlier, is how can we make
15 sure that we have an excellent report that will, as I
16 mentioned, help us, the Native American programs, but
17 also help the Legal Services programs.

18 Because there are a lot of questions that
19 still need to be answered. There are a lot of issues
20 that we need to work out with LSC. But the one thing
21 that remains is the need in Indian Country, the need
22 where our relatives need that help for whatever they

1 have, whether it's in tribal court, state court, or
2 federal court.

3 And there's a lot of need out there, and
4 that's why we're trying to work with Legal Services
5 Corporation and trying to put together this report.
6 And so that's where we are at this point.

7 I'd be happy to answer any questions you may
8 have.

9 CHAIRMAN HALL: Sarah?

10 MS. SINGLETON: Levon, as I recollect from the
11 meeting in -- which town was it? Tucson?

12 MR. HENRY: Tucson.

13 MS. SINGLETON: -- what you were requesting
14 was about \$1-1/2 million. Is that still the general
15 request?

16 MR. HENRY: Yes.

17 MS. SINGLETON: And at that time, I guess I
18 was under the impression that was going to be used for
19 the programs -- I thought they were smaller, but they
20 may not have been smaller -- but that needed additional
21 monies just to be viable. Is that not how that money
22 is going?

1 MR. HENRY: Yes. That's part of how
2 it -- there was a whole scenario that was put together
3 with tables and charts and everything else that you
4 could imagine so that everybody understood that the
5 request, part of that request -- I forget the exact
6 percentage -- was going to help smaller programs, and
7 the rest was going to be distributed between all the
8 programs so that everyone would be able to have some
9 type of assistance.

10 MS. SINGLETON: And right now, the Native
11 American programs are funded under a provision that
12 says they can be no less than some percentage of what's
13 given to the other programs. Is that correct?

14 MR. HENRY: Yes.

15 MS. SINGLETON: Do you know how that
16 1.5 million translates into the percentages? In other
17 words, if the Legal Services Corporation wanted to
18 increase the percentage that's devoted to Native
19 American programs, what would it go from and what would
20 it go to?

21 MS. SARJEANT: I'm not sure exactly what the
22 1.5 million would be in terms of a percentage. We

1 cannot go below what's in the statute, and we are
2 currently at an amount that is higher than what is
3 required. And that 1.5 million, as Levon talked about,
4 was when there was some thinking that there was going
5 to be a significant increase in basic field. I'm not
6 even sure with 2008 if we got 1.5 million altogether.

7 MS. SINGLETON: Well, I'm sorry, but that's
8 not my question.

9 MS. SARJEANT: Right.

10 MS. SINGLETON: I appreciate that there's a
11 limited pie to be spread around. But if, as was done
12 before, Legal Services Corporation determined it wanted
13 to devote a higher percentage of the monies it gets for
14 basic field to Native American programs, it could up
15 the percentage that it gives to Native American
16 programs.

17 MS. SARJEANT: And it has done that.

18 MS. SINGLETON: I know that. And I was just
19 wondering what kind of a percentage increase it would
20 take to cover the 1.5 million.

21 MR. HENRY: If I may, Mr. Chair --

22 CHAIRMAN HALL: Yes.

1 MR. HENRY: -- I believe the percentage that
2 we get now is 2.8 percent. And adding the 1.5 to that
3 I think would make it -- I don't have the figures right
4 down. But I think it would come up to 3.2 percent or
5 some percentage like that. It wouldn't be a
6 significant increase.

7 MR. MEITES: David?

8 CHAIRMAN HALL: Yes?

9 MR. MEITES: I am totally at sea. I thought
10 that the funding formula was something that the Legal
11 Services Corporation had no discretion about. From my
12 first day on this board, I have believed that the
13 distribution of money was pursuant to an inflexible
14 formula that neither the board nor the Corporation in
15 any way could change. Am I wrong?

16 MS. SINGLETON: For Native Americans, you're
17 wrong.

18 MS. SARJEANT: Yes. For basic --

19 MR. MEITES: Well, Sarah, I'd like to hear --

20 MS. SARJEANT: For basic field --

21 MR. MEITES: Wait. I would like to hear the
22 extent of discretion that the Corporation has to adjust

1 the distribution of funds with regard to our grantees.
2 What is the basis of that, and what is the extent of
3 the discretion, and who makes the decision, and what
4 review the board has of that process.

5 MS. SARJEANT: Vic?

6 MR. FORTUNO: I think that as to basic field,
7 it is largely dictated by formula.

8 MR. MEITES: "Largely" won't do.

9 MR. FORTUNO: I think the only exception to
10 that may be Native American funding, and I think --

11 MR. MEITES: Where is that written? Is that
12 in the statute? In our regulations?

13 MR. FORTUNO: I was just starting to look that
14 up as I was called up. There was a time when there was
15 a line for Native American funding, there was a line
16 for migrant funding, and there was basic field funding.
17 There were several other lines as well.

18 In '96, there was an elimination of that
19 breakdown, and we got a lump sum for basic field. The
20 basic field funding to basic field programs is per
21 formula. I'm not sure -- I think that there is
22 discretion in terms of how we take the basic field

1 funds to allocate to Native American programs, and I
2 think that's where this -- I don't want to call it
3 slippage, but where there is some discretion.

4 I'm not sure. I've not focused on that, so
5 I'm not sure I can describe with surgical precision
6 just how that works. I could certainly look at it and
7 report back.

8 MR. MEITES: Well, since I've been on this
9 board, I do not recall seeing any financial report that
10 ever described as a separate line item grants to Native
11 Americans. And if in fact it is treated separately,
12 I'd like to see how it is treated separately, I'd like
13 to know who makes the decision, and I'd like to know
14 what the board's role is in overseeing that decision.

15 MR. FORTUNO: Actually, Mattie, while I was up
16 here, had a chance to take a quick look and has some
17 thinking on it. And I've asked her to come up and see
18 if she can shed some light on that.

19 MS. COHAN: Hi. For the record, this is
20 Mattie Cohan, senior assistant general counsel for
21 Legal Services. And I'm doing this off the top of my
22 head. I believe what happened was --

1 MR. MEITES: No, no. I don't want you to feel
2 that you have to answer this question today.

3 MS. COHAN: No.

4 MR. MEITES: If you want -- this is a question
5 that I didn't know existed till five minutes ago, and I
6 can't really expect you to be prepared to answer it.
7 However, if in fact this is an area where the
8 Corporation has some discretion, I think that the board
9 is obliged to be aware that discretion is being
10 exercised and to stay on top of that discretion; and
11 if it is within the Corporation's mandate to make
12 decisions in this area, that we as a board be informed
13 the basis for the decision and the nature of the
14 decision made.

15 And I certainly don't expect you to answer
16 these questions right now. But I think they're
17 important to the board both in terms of the finance
18 committee and reporting matters; to the provisions
19 committee to being advised of allocation of resources;
20 and ops and regs to know what the structure of this
21 decision is. And our new audit committee, of course,
22 is going to be chewing at this as well, as I see Herb

1 reaching for his microphone.

2 So I'm not asking you to answer any of these
3 questions now. But I would like an answer at some
4 point to explain to us what is going on with the
5 funding of Native American programs.

6 MS. SARJEANT: I do think that with that
7 request, what we will do is to give the board that type
8 of legal memorandum that answers that question.

9 MR. MEITES: Right. I'm not asking you to
10 answer anything off the cuff.

11 MS. COHAN: In the meantime, just for your
12 edification, I will note that what happened was when
13 the separate line item was taken away and kind of
14 folded into the basic field grant, the legislative
15 provision -- and this is in the '96
16 legislation -- requires the Corporation to keep at
17 least the same proportion of Native American funding as
18 had happened up to 1995.

19 So there is no discretion for the Corporation
20 to fund the Native American programs at an amount that
21 would proportionally less than they got in 1995. But
22 it doesn't say anything about the Corporation being

1 fettered in terms of increasing the Native American
2 funding proportionally to the rest of the basic field
3 grant.

4 MR. MEITES: Thank you.

5 MS. COHAN: So that's where that comes from.

6 CHAIRMAN HALL: Herb?

7 MR. GARTEN: Before Tom got into --

8 CHAIRMAN HALL: Could you speak a little
9 closer to the mike?

10 MR. GARTEN: Herb Garten here. Before Tom got
11 into asking questions that I think should be answered,
12 I had a simple question, and that was: How did you get
13 to the 2.8 percent? And I think Mattie has partially
14 indicated where that came from. It was the
15 proportionate amount at the time --

16 MS. SINGLETON: No, it wasn't.

17 MR. GARTEN: It wasn't? Well, tell me what it
18 was.

19 MS. SARJEANT: To get to 2.8 was a decision by
20 the LSC president at that time.

21 MR. GARTEN: Well, do you know what the figure
22 that you're bound to --

1 MS. SARJEANT: The figure that --

2 MR. GARTEN: No. I'm talking what percentage
3 can you not go below?

4 MS. SARJEANT: That's the -- what is it, 2.5.

5 MR. GARTEN: That answers my question.

6 MS. SARJEANT: The 2.5. We can't go below
7 that.

8 CHAIRMAN HALL: Sarah?

9 MS. SINGLETON: In that regard, in terms of a
10 legal memo, I read the last time this came up a series
11 of board minutes or memorandum on this issue that
12 someone provided to me -- probably Vic, but I'm not
13 sure -- that I wish you would include in your
14 discussion because it showed that John McKay made that
15 decision to increase the percentage from 2.5 to 2.8.
16 He informed the board of it. Some board members
17 suggested that maybe the board should vote on it, but
18 the board never did vote on it.

19 Based on precedent, if not law, I think the
20 decision is a management prerogative, not a board
21 prerogative, based on past practice, which I guess
22 could be changed. But in any event, I think that

1 aspect of this issue ought to be discussed in your
2 memo.

3 But I also wanted to ask that this be done
4 relatively quickly because our budget cycle is two
5 years ahead of where we are. So right now we already
6 turned something in to Congress for 2009. Right? We
7 rejected putting in a separate line item for Native
8 American funding that the NLADA suggested we do, and I
9 understood that was based on a proposal that NAILS had
10 made.

11 And so right now, if we go true to form, we're
12 looking at 2010 or later before we address what may be
13 a sustainability question for the programs that are
14 small. And that's what's really worrying me now. It's
15 not, well, I would like to see the Native American
16 programs across the board get more money. It's the
17 sustainability issue I'm very concerned about for
18 today, not for two years from now.

19 CHAIRMAN HALL: Well, it's clear from this
20 discussion that we need to respond back or the staff
21 needs to respond back to that. And though this is
22 something that has come up in the provisions committee

1 and this committee members should get it, I think it's
2 an issue that goes beyond provisions. So I would
3 encourage you to provide what you come up with to all
4 board members.

5 And I know we are still in the midst of our
6 presentation, so there are some other issues that we
7 need to cover and talk about. But one question I had
8 was the reports that have been referred to. Could we
9 get access to those? I know one is in a draft form and
10 you may not feel comfortable distributing them.

11 But even if the draft one is ready to be
12 distributed, I know, just speaking personally, I would
13 like to be -- I would like to see it, and even the 1998
14 one, which may be dated. I don't recall ever getting
15 that one, so I would like that as well.

16 MR. GARTEN: May I ask one simple question?

17 CHAIRMAN HALL: Yes.

18 MR. GARTEN: Do you have the funding necessary
19 to complete that report?

20 MR. HENRY: No, we do not.

21 MR. GARTEN: Do you know how much funding you
22 need?

1 MR. HENRY: \$14,400.

2 MR. GARTEN: Thank you.

3 MR. HENRY: And Mr. Chair, we do have copies
4 of the draft report here and available if you would
5 like to have them right now.

6 CHAIRMAN HALL: I would. Thank you very much.
7 Who is speaking next?

8 MR. HENRY: Actually, Mr. Chair, I think
9 that's -- we're done.

10 CHAIRMAN HALL: Oh, I'm sorry.

11 MS. MEEK: I was just wanting to say, in
12 addition to what Karen and Levon have told you, is I
13 hope I gave you just a little understanding this
14 morning of the depth and breadth of law that applies to
15 Indians. And I don't think any other minority or class
16 of people in the country have to deal with some of
17 these types of laws that are applicable to these
18 people, rich or poor.

19 And I've been in Indian Legal Services since
20 1989, and from what I see, the problems are growing
21 exponentially. The number of people that have -- of
22 decedents' estates that are not being probated, the

1 amount of land that's being fractionated and lost, are
2 getting at a critical mass that I don't think that any
3 amount of funding right now could cure it.

4 But one of the questions that did come up was
5 the gaming revenues. And I thought to myself, yes,
6 where is all that money going? So we put together a
7 report on that that Steve Hager of Oklahoma Indian
8 Legal Services did a lot of research on some of the
9 gaming issues. And there's a lot of diversity in the
10 country with -- Oklahoma has only had casino-type
11 gaming in the last four or five years. It only became
12 legal then. And we're never going to have the
13 lucrative market that, say, New York or Florida has.

14 But there is a lot of revenue coming from
15 gaming, and I think Steve Hager has put together a
16 presentation on where that money is going.

17 MR. HAGER: Well, not to take much of the
18 committee's time. But a lot of people in Indian
19 Country believe that tribal gaming is sort of a pot of
20 gold at the end of a rainbow. Harsh reality is
21 starting to set in in the form of what that money's
22 going to be used for.

1 We do have a draft paper that examines this
2 issue and talks in small amount about how tribes are
3 using the funding. And long story short, basically, I
4 cite an example using the Cherokee Nation, which
5 started out with 356- or \$353 million in gaming funding
6 for year 2006.

7 At the end of mandated processes, at the end
8 of overhead, at the end of costs, they end up with
9 about \$1.1 million left. And that goes into their
10 general fund, and in 2006 that money was
11 used -- obviously, not to fund us -- but used to fund
12 rural fire departments that had responded to -- 2006
13 was the third year of a drought, and the wildfires were
14 just ravaging Oklahoma.

15 The rural fire departments had no funding, and
16 so the Cherokee Nation in their service area stepped
17 forward and provided half of that amount. Pretty much
18 their entire discretionary fund, half of it went to the
19 fire departments as a stopgap measure for that summer.

20 And that's what we see when we look at gaming.
21 There are some tribes that get all the headlines. The
22 Mashantucket Pequots from Connecticut are tremendously

1 wealthy. But even tribes such as the Cherokees, which
2 have significant resources, which have the ability to
3 game -- and I use the Cherokees for a very specific
4 reason as an example, because they do not have gaming
5 partners. They run their own casinos. They run their
6 own hotels. So the profit that comes from those
7 establishments are the Cherokee profits alone.

8 Most tribes don't do that. Most tribes engage
9 in contract agreement with major gaming organizations
10 such as Bally's or Harrah's. So the money they start
11 out with in that situation would be even less than the
12 Cherokees would have.

13 The problem that we see is that the pot
14 becomes very, very small when you get to the end of the
15 rainbow. From there, we then start running into the
16 other problems, which is simply that most tribes are
17 not established as grant-making organizations. They
18 are established as governments. And as many
19 governments that we find in Indian Country want, if
20 they give you money, they expect certain results.

21 There was a recent contract open to bid for a
22 miniature legal services-type operation for the

1 Muskogee Creek Nation in Oklahoma. The conditions that
2 were placed on that were a complete anathema to the
3 general legal services concepts of providing services
4 to as many people as you can, of making sure that the
5 people who were getting services were in need of
6 services.

7 What the tribe wanted were attorneys for their
8 members, only for their members. The money that they
9 were going to hand out wouldn't be used for anyone
10 else. It would only be used for their tribal members.
11 And because it is a political decision and a political
12 operation, the money would not only just go to their
13 members, the money would go to members that they told
14 you to provide services to.

15 So there would be an oversight board which
16 would control the way the attorneys who they would
17 contract with would be able to use the money. And
18 that's something that we see a lot in contracts with
19 tribes. When they give you money, they expect you to
20 do certain things.

21 The third area, the third thing that we looked
22 at, were simply the legal ethics. And it raises some

1 significant concerns when we accept funding from people
2 that we sometimes have to sue. When we represent low
3 income Native Americans, sometimes they're receiving
4 services from the tribes that are not sufficient
5 services and we have to look at those, particularly in
6 the area of housing, the Indian Civil Rights Act area,
7 and the Indian Child Welfare Act, where we may be
8 representing parents against a tribal social worker.

9 In those cases, if we're taking money from the
10 tribe, it impacts on our ability to continue working
11 with those clients. And quite frankly, the overriding
12 thing in my mind -- and I've been at OILS since 1990; I
13 started just after Colline did -- is that trust in
14 Indian Country is a remarkably fragile thing.

15 You can do good work for years and years and
16 years, and then one thing happens and people begin
17 talking about you. And since you're not there every
18 day, it's easy for them to talk. And the end result of
19 it is that you can throw away years of good work with
20 just one action. And taking money from tribes for
21 general services, not for specific targeted programs, I
22 think raises some really significant issues not only in

1 ethics but in the ability to continue to do the job
2 that we want to do and that Legal Services Corporation
3 expects us to do.

4 There are -- well, I'll just end on this note.
5 When I first started working, I told a person in our
6 office that I had to go up to the Pawnees. And she
7 said, oh, that's really bad. Be careful up there. You
8 want to lock the doors when you go there. You want to
9 keep it completely safe. And I said, why is that?

10 Well, it turns out she was Cheyenne Arapaho,
11 and they've sort of had a thing going against each
12 other for the last couple of hundred years. And she's
13 still holding a grudge for actions that occurred in the
14 late 1800s.

15 (Laughter.)

16 MR. HAGER: So it's a very delicate place to
17 be, and people tend to have very long memories. So for
18 these reasons, we looked at it, and tribal funding
19 raises some really serious problems in Indian Country.

20 CHAIRMAN HALL: Well, just a couple of
21 questions. I mean, one angle that I think you have
22 addressed is around the possibility of conflicts if the

1 tribe is funding the legal services program. But
2 another issue that I think is of importance is whether
3 gaming is moving people from the level where they would
4 even need your services to the point where they are
5 more economically self-sufficient.

6 And I guess my question is: Does the report
7 address that issue? Is there data out there that
8 indicates whether certain tribes, through gaming, are
9 able to provide income to the tribe members so that
10 their economic status changes, and therefore, if they
11 have legal needs, they can afford to get legal needs
12 other than using legal services?

13 Because to me there's two approaches. One is,
14 could these monies be used to fund legal services? But
15 another is, if the funding is going to the members of
16 the tribe, then you are addressing the problem there as
17 well. So I guess I'm just asking, is there data in
18 that regard?

19 MR. HAGER: Well, that is an area of study
20 that I believe the report that would cost \$14,000 would
21 examine. But just on a note, in Oklahoma, one of the
22 things I do talk about in the report is that it's

1 impossible to put a unifying, over-arching statement of
2 Indian gaming on. It varies from tribe to tribe. And
3 of the 38 tribes that are federally recognized
4 currently in Oklahoma, there are per capita payments
5 that may be a few thousand dollars a year to
6 significant per capita payments.

7 Some tribes, especially the five civilized
8 tribes, the really big tribes in Oklahoma, don't give
9 per capita payments at all. They put all of their
10 money into resources for the tribe as a whole, but they
11 give no money to the individuals.

12 I know in some states outside of Oklahoma, per
13 capita payments have become such a hot area of
14 discussion that they are actually fighting amongst
15 themselves, and when one faction gains power, they
16 immediately begin throwing other people out of the
17 tribe to increase the per capita payment. So we see a
18 really bad -- a really dark side to gaming in that
19 situation.

20 But generally, like I said, I've been doing
21 this since 1990. And I wish we could say that we were
22 having too many people call us and they were being

1 found to be over income. We just -- it just hasn't
2 been a significant problem for us at all. Some tribes
3 are wealthier than others, but most Indian people are
4 still right at the bottom of the socioeconomic ladder.

5 CHAIRMAN HALL: Other questions? Sarah?

6 MR. GARTEN: May I just -- I happen to be a
7 member of the Federal Bar Association. And to our
8 surprise, a recent issue, very, very recent, of the
9 Federal Lawyer had a whole issue devoted to this
10 subject matter. And if you haven't seen it, certainly
11 I'm willing to let you have it, but return it in due
12 course to me.

13 MR. HAGER: Well, I actually have that on my
14 desk.

15 MR. GARTEN: You have it yourself? Good.

16 MR. HAGER: One of the things that we are
17 fortunate about in being in Oklahoma is that we have
18 any number of people who are experts in Indian gaming,
19 lawyers that we can talk to. And the last person I
20 spoke to about it sort of began laughing hysterically
21 when I suggested that money might be going to legal aid
22 from it because he said that he has a hard time getting

1 paid. SO he didn't think they'd be giving it away any
2 time soon.

3 CHAIRMAN HALL: Sarah?

4 MS. SINGLETON: Yes. I have three questions.
5 In terms of the conflict that you raise, could you talk
6 with us a little bit about why that would be any
7 different than a legal aid program that gets money from
8 state government and then sues their welfare department
9 to get somebody benefits? Or even the federal
10 government, I guess. Why is that a different conflict?
11 That's my first question.

12 MR. HAGER: Well, I think first just the
13 immediate thing is that it's a question of size. The
14 tribe is much smaller.

15 The second thing is that it's a question of
16 expectations. Tribes are -- well, I should qualify
17 that by saying the tribes that I work with, which is
18 about 12 tribes in central Oklahoma -- there's no
19 really nice way to put it. They tend to hold a grudge.
20 And so if we were taking money from them and then sued
21 them, we wouldn't be taking the money any longer
22 because they would use that as a political weapon to

1 get us to lose the lawsuit, to drop the lawsuit.

2 The third area is that ethically, when you're
3 accepting money from the tribe, you have an obligation
4 to disclose to the individuals that you are receiving
5 the money, or that you are representing that you're
6 receiving money from the tribe. And this has a
7 chilling effect on that relationship because they tend
8 to look upon us askew if we're taking money from the
9 tribe.

10 One of the reasons why everybody sort of likes
11 Oklahoma Indian Legal Services right now is that we
12 don't have any axes to grind. We don't have tribal
13 relationships -- well, we have positive tribal
14 relationships, but we're not under anyone's thumb as
15 far as control goes. And if we were receiving money
16 from a tribe in this fashion for direct services, I
17 think that perception would be very changed.

18 As far as ethics go, I do examine the actual
19 provisions of the code of professional conduct in the
20 paper.

21 MS. SINGLETON: My second question -- and
22 Colline, you might want to answer this; I don't

1 know -- but one of the things that we've looked at here
2 is how to leverage other types of resources besides
3 funding from LSC to get more of. I think that was
4 probably the underlying genesis of the Indian gaming
5 question. But the thing that this committee has been
6 looking at for the last year is how to leverage pro
7 bono participation.

8 Could you compare your ability to use pro bono
9 voluntary lawyers to help your clients compared to
10 another legal aid provider? What's your ability?

11 MS. MEEK: I think the problem with pro bono
12 is the pro bono attorneys we utilize now are few and
13 far between because most of them have done an
14 internship at our office or somehow we know that they
15 know what they're doing when it comes to Indian law.

16 The private bar in general -- and not
17 everybody; there's a few out there that are pretty
18 good -- but they don't have any knowledge of the type
19 of law we practice. It's not an area where you can
20 make a lot of money at.

21 And Indian legal services as a whole are
22 exempted from the pro bono provisions. I think basic

1 field have to spend like 12 percent of their budget on
2 pro bono, or something like that. But Indian legal
3 services are exempted from that, so we've never really
4 built a pro bono panel.

5 The pro bono people we use are people that
6 used to work at our office that we're sure know how to
7 do these types of cases because, by and large, there's
8 a dearth of attorneys that know how to do this work, or
9 that would want to spend the time it takes on some of
10 these probate cases to do the investigation necessary
11 to complete one. Some of these would take hours and
12 hours, and the pro bono attorneys aren't going to put
13 that time into it.

14 But there are very few attorneys that I'm
15 aware of that are available to take these types of
16 cases.

17 MS. SINGLETON: Thank you.

18 CHAIRMAN HALL: Well, if there are no other
19 questions or other comments that you want to share, I
20 would just like to thank you, all three of you, for
21 your presentation and for keeping this issue alive.
22 And it's not one that we will forget at all.

1 MS. MEEK: Thank you.

2 CHAIRMAN HALL: Yes?

3 MR. HENRY: Mr. Chair, if I may just add just
4 one thing. The report that Mr. Hager spoke about
5 is -- we passed that out. And I just want to say that
6 that is a draft report, something that is a work in
7 progress. And when we do finish, it will be included
8 in our update report.

9 CHAIRMAN HALL: Okay. Thank you very much.

10 Our next item is an item that should have been
11 dealt with at our annual meeting, which is more
12 appropriate to kind of talk about what will be on our
13 agenda. I want to just take a minute to highlight what
14 we've been focusing on, and then opening it up to the
15 other committee members to make some additional
16 suggestions if they have about where we should be
17 going.

18 As you know, we have had a couple of items
19 that we have focused a lot of attention on of late.
20 The private attorney involvement and the pro bono
21 activities have consumed quite a bit of the time of the
22 provisions committee. I think that we made some very

1 good effort in this area.

2 The development of the action plan for private
3 attorney involvement -- help close the gap and unleash
4 the power of pro bono has had an effect. As you've
5 seen, many of our grantees, the boards are passing
6 resolutions. There are other efforts that are going on
7 in this regard. And I think we should feel good about
8 that particular effort. There's still work to be done
9 and staff is still following up on that, and we
10 certainly need to as well.

11 The other broader issue which has been more of
12 a recent focus of ours has been looking at the issues
13 relating to recruitment and the hiring and retention of
14 lawyers in the various offices, and all of the
15 challenges that come from that in regards to salary and
16 in regards to other types of support. We even got into
17 some transition issues of what needs to be done to make
18 sure that there are succession plans in place, et
19 cetera.

20 And that is an issue that I think we want to,
21 as a committee -- or I believe that there's still some
22 more to be done in that particular area, and would like

1 for us as a committee, working with management, to try
2 to see if we can develop a more thorough understanding
3 of what the challenges are that are facing our grantees
4 in regards to hiring the right individuals.

5 The issue of funding and salaries that we even
6 heard in the presentation this morning tells us that
7 that is going to be with us for a while. And I know
8 management is committed to trying to get a better grip
9 on how we can address those sorts of issues.

10 We have certainly made some progress in better
11 understanding the challenges relating to developing
12 diversity leaders through the pilot program. And we
13 had, I think, a good report on that. And the LRAP
14 pilot program has also given us some insights about
15 strategies that can be used in that area as well.

16 But the question before us is, one, this
17 notion of whether we should continue to focus on those
18 challenges relating to hiring and retention so that we
19 could have a better comprehensive sense of what needs
20 to be done, and to give guidance to our grantees.

21 And in addition to that, are there other
22 issues that committee members feel that in this coming

1 year, and maybe even beyond that, that the provisions
2 committee should be focusing on? So this is more
3 to -- and though we don't have a lot of time for
4 brainstorming, this is more to kind of hear what's on
5 the mind of committee members about issues that we need
6 to keep our eyes on.

7 Certainly the topic that we've just heard
8 about seems to be one that we probably need to keep
9 looking at and dig a little deeper. But there may be
10 some others that have not been talked about.

11 So if we could just take a few minutes to see
12 if there are some other issues. We don't have to reach
13 a full decision here, just based on time. But if we at
14 least know what committee members are interested in,
15 then we can maybe, via e-mail or conference call, reach
16 some resolution if there are some competing topics that
17 we need to decide upon.

18 So I'm just opening the floor for suggestions
19 and recommendations. Sarah?

20 MS. SINGLETON: I just want to clarify. The
21 comment that you made about this issue, being the
22 provision of services to Native Americans, does that

1 mean that is on our 2008 agenda?

2 CHAIRMAN HALL: I think I want us now to
3 decide that we -- I think just by the nature of this
4 one, it left some issues for us to follow up on. But I
5 think it would be good if we confirmed that not only do
6 we want a follow-up, but that this is an issue that we
7 want to explore in greater depth.

8 MS. SINGLETON: Well, I would like to ask the
9 chairman to keep it on the agenda. I believe this is a
10 crossover issue. But I think that the provision aspect
11 of the issue should drive the need for or the
12 resolution of the funding aspect of the issue. So I
13 would like this committee to keep it on the 2008
14 agenda.

15 CHAIRMAN HALL: Other comments in regards to
16 that suggestion, or other suggestions that committee
17 members have?

18 MR. GARTEN: Should we take into consideration
19 that we are in or close to a recession that is
20 affecting many families who may be in the position to
21 require services that previously were able to afford
22 them on their own in a number of areas?

1 We pointed out the problems in a recent
2 Washington meeting of the ABA Day in Washington to
3 members of Congress of concerns with regard to mortgage
4 foreclosures and other areas that perhaps we should
5 take a look at to see whether our committee should be
6 involved to any extent in addressing those issues.

7 CHAIRMAN HALL: Okay. Other suggestions or
8 recommendations? Tom?

9 MR. MEITES: As a non-committee member, given
10 that the two pieces of legislation that have been
11 enacted, the Harkin bill and the loan forgiveness, I
12 think it would be helpful if the provisions committee
13 could stay on top of the actual implementation of both
14 of those programs and perhaps report to the board
15 generally about regulations, funding, and how our
16 grantees are finding them useful or not useful.

17 CHAIRMAN HALL: Thank you. Any owners?

18 MR. FUENTES: Mr. Chairman, I'd just like to
19 add that I'd like to keep it open, and the members of
20 the committee be encouraged to send you a note which we
21 might circulate between now and our next meeting if we
22 have ideas that evolve.

1 CHAIRMAN HALL: That's totally appropriate.

2 That would be a good thing to do.

3 MS. CHILES: Mr. Chairman, one other item.

4 And I agree wholeheartedly with all the other

5 suggestions that the other members of the board have

6 brought up. But I'm looking at our draft charter, and

7 there's an item on our draft charter under Core

8 Responsibilities that might require us to engage in

9 some significant work. And I know we're not at that

10 point on the agenda yet, but if we adopt this charter,

11 that could dictate some of our agenda for the upcoming

12 year.

13 CHAIRMAN HALL: Well, that's a very thoughtful

14 reminder since I skipped that item.

15 (Laughter.)

16 CHAIRMAN HALL: That's a very diplomatic way

17 of saying, you blew it, guy. So I thank you.

18 Well, that's even more reason why we will need

19 to move along. Well, I will -- I think all of these

20 items that have been suggested are ones that we can

21 keep in front of us so that the list is not so

22 extensive that we can't try to deal with all of these.

1 And maybe not on each meeting agenda, but I do think we
2 can try to make sure all of these stay in front of us.
3 And also, as Tom suggested, if committee members think
4 of other things after this meeting and want to e-mail
5 those to me, that would be very appropriate.

6 So I will just take it as the sense of the
7 committee that we will keep all of these items in front
8 of us, and that we don't need to vote on or eliminate
9 any of them, unless there are some objections to that.

10 So going back to item No. 6, there is attached
11 a proposed charter, and we thank Vic Fortuno for having
12 pulled this together for us. And so we ask him if
13 there are any additional comments you want to share
14 about it before we open it up for discussion and a
15 vote.

16 MR. FORTUNO: I think that just so that
17 everyone understands, what we did was drafted charters
18 for each of the committees in a way that they reflect
19 some of the core -- the membership, the authority. The
20 difference is in the duties and responsibilities, of
21 course.

22 So you'll see some similarity across charters

1 if you look at the various drafts that are before you,
2 and even the charter that's already been adopted for
3 the audit committee. But where the difference will lie
4 is in the core functions, that is, the duties and
5 responsibilities.

6 But I'm happy to go through it or respond to
7 any specific questions. I don't know if you've had an
8 opportunity to review it. I also brought along, in
9 case you don't have it but find yourself wanting to
10 refer back to the governing document currently in
11 place, which is a '95 board resolution setting out the
12 roles of the various committees.

13 And it's that document, that resolution which
14 sets out the role and the functions of the various
15 committees, that the GAO suggested should be expanded.
16 And that's what these draft charters attempt to do.

17 CHAIRMAN HALL: Sure. Can we just first get a
18 motion to get it in front of us, and then start some
19 discussion of it see if there are changes or things
20 that people would like to make?

21 M O T I O N

22 MS. SINGLETON: I move we adopt the proposed

1 charter of the provision for the delivery of legal
2 services committee, which has the date of 4/10/08
3 on it.

4 CHAIRMAN HALL: Is there a second?

5 MS. CHILES: Second.

6 CHAIRMAN HALL: Discussion? Any changes or
7 questions? Sarah?

8 MS. SINGLETON: I have a question about
9 part V, Authority, The Committee, paren (1). And maybe
10 this is also a philosophy question. Doesn't everybody
11 already have access to the Corporation's books and
12 records just by virtue of being on the board?

13 MR. FORTUNO: Yes. Not only does the board as
14 a collegial body, but each director individually has a
15 largely unfettered right of access.

16 MS. SINGLETON: Why would we need to repeat
17 that in here?

18 MR. FORTUNO: You don't. It does appear,
19 however, in the audit committee charter, so for the
20 sake of consistency, so that nothing would be inferred
21 from having left it out, it appears here. But I agree
22 it need not be because that's simply stating a right

1 that you already have as individual members as well as
2 a collegial body.

3 MS. SINGLETON: And then when it says outside
4 consultants, is that the committee's outside
5 consultants or the Corporation's outside consultants?

6 MR. FORTUNO: It would be both. The committee
7 could -- with the audit committee, there's generally a
8 little more attention paid to the availability of
9 resources and the committee having resources it can
10 draw upon to retain consultants. I think that where it
11 was left was that at least with the audit committee,
12 instead of the committee having a budget to draw from,
13 it would simply look to the board to authorize the
14 hiring and payment of consultants.

15 And so the idea again here was, just as a
16 starting point, to have this cut across the various
17 committees so that each of the committees would have
18 access to consultants. And of course, if there are any
19 consultants that the Corporation has hired, you may
20 want to have access to them much the way you do access
21 to individual staff members.

22 So it was meant to apply to both. But again,

1 subject for discussion, and it's the committee's
2 choice.

3 CHAIRMAN HALL: Other comments? Yes?

4 MR. GARTEN: Why didn't we include or utilize
5 the same language we did for the audit committee, which
6 made it clear that if the committee called on outside
7 consultants, it had to be with the authority of the
8 board? And I'll read you what applies in the charter
9 of the audit committee.

10 This is under VII.(5). "May rely on the
11 expertise and knowledge of management, the OIG,
12 external auditors, and such consultants and experts
13 that the board approves for carrying out its oversight
14 responsibilities."

15 MS. SINGLETON: Look at (4). Herb, look at
16 (4) of this committee's. Yes. Go to V, part (4).
17 It's almost the same language.

18 MR. GARTEN: Then why do we have it in the
19 paragraph under discussion, outside consultants?

20 MS. SINGLETON: Well, it's just -- it's almost
21 the same language in that.

22 MR. GARTEN: But getting back to the first

1 question --

2 MR. FORTUNO: Well, one is access. If you
3 want to --

4 MR. GARTEN: Under Authority, outside
5 consultants.

6 MR. FORTUNO: The (4) of the draft that we're
7 talking about now, the draft provision, that is V.(4),
8 speaks about experts that the board approves for
9 carrying out its responsibilities.

10 I think that's not necessarily addressing
11 expense, although I think that most people would agree
12 that the board approval goes to expense, goes to
13 approving payment to the consultants. It doesn't
14 expressly address that. We could do that, and I think
15 that would more closely track what you're talking about
16 in the audit committee charter.

17 MR. GARTEN: We had some discussion on that
18 when we came up with the final draft of the charter of
19 the audit committee, and concluded that we should -- if
20 you have a right to hire an outside consultant and
21 you're to expend money, you should --

22 MR. FORTUNO: Although the audit charter

1 doesn't expressly address expense, either, it's implied
2 that consultants approved by the board extends to
3 payment of the fees of consultants.

4 MR. GARTEN: Well, what is your opinion?
5 Wouldn't you bet better off tracking the language?

6 MR. FORTUNO: I think that if that's the
7 intent, the clearer the better. I think avoiding
8 ambiguity at this stage is always well-advised.
9 Nevertheless, what it does is it does track the audit
10 committee charter. And my concern was that if we
11 differed too much from the audit committee charter,
12 that something would be read into the different
13 wording. That is, it was crafted differently because
14 it was intended not to extend that far or --

15 CHAIRMAN HALL: Jonann, did you want to say
16 something? Then Lillian.

17 MS. CHILES: Yes. I have a question about
18 section VI, Duties and Responsibilities.

19 MR. FORTUNO: Yes.

20 MS. CHILES: Core Responsibilities, item
21 No. (4). Can you give me some examples of policy
22 issues regarding grantee audits? That just struck me

1 as being rather broad, and I'm wondering what that
2 might encompass since I sit on this committee.

3 MR. FORTUNO: It was meant to be broad because
4 there wasn't anything concrete in mind. But again, it
5 was intended to cover the landscape so that if you
6 chose to narrow it, you could do so. It's easier to
7 have the universe of options presented here and then
8 select from among those than to have a narrower menu
9 presented and expect that at this session, additions
10 would be thought of to include.

11 That's, I guess, a long-winded way of saying
12 that there wasn't anything concrete in mind. It was
13 intended to be broad in case it was something you
14 wanted to consider. But there wasn't a specific
15 example or a particular experience that caused the
16 thought, you know, maybe we should talk about general
17 policy considerations involving grantee audits. That's
18 also an area where the operations and regulations might
19 have some interest, and I think, to use Sarah's term, a
20 crossover area.

21 But again, this is the universe of
22 possibilities, if you will, and for the committee to

1 determine whether it wants to have this broad a
2 jurisdiction to recommend to the board, or whether it
3 wants to narrow it. And it's easier just to pare it
4 down than to expand it.

5 MS. CHILES: I will say it caught my attention
6 because it is so broad and because it does seem to
7 overlap some of the other core responsibilities of ops
8 and regs. And I was just wondering how that would
9 actually work.

10 MR. FORTUNO: And in fact, the idea is for
11 each of the committees to take up -- each committee to
12 take up its own draft charter for discussion, and then
13 to have the various drafts taken up by the board
14 tomorrow as part of -- I think it's agenda item 15(e),
15 where things like this can be addressed.

16 That is, if two committees are recommending
17 that they have jurisdiction over a specific point that
18 might be seen as crossover, there could be some
19 discussion at that point and they could be reconciled
20 either by eliminating it from one or recrafting the
21 language so that the two can be read in a manner that
22 reconciles it and doesn't conflict.

1 MR. McKAY: And on top of that, Chairman
2 Meites has a strong record of protecting his turf over
3 at ops and regs, so I don't think there's a danger.

4 MS. CHILES: Thank you, Vic.

5 CHAIRMAN HALL: Lillian, and then Sarah.

6 MS. BeVIER: I'm not a member of the committee
7 so I'm happy to yield to someone who is.

8 CHAIRMAN HALL: No. Go ahead.

9 MS. BeVIER: Well, I just have this question
10 about this Resources thing. It's in all of the
11 charters, I noticed.

12 MR. FORTUNO: Yes.

13 MS. BeVIER: And it seems to me that -- I
14 mean, I'm naive here when it comes to drafting
15 charters. But this is -- first of all, the direction
16 here is to the offices, divisions, and components of
17 the Corporation shall cooperate. Okay. So this is our
18 charter, but others are directed to cooperate.

19 And then there's something that comes in the
20 passive voice, which is, "The committee shall be given
21 the resources necessary to carry out its
22 responsibilities." And the question is, is this -- I

1 don't understand the sort of effect of this resources
2 thing. Is it just to reassure us that we're going to
3 get -- or all the committees are going to get the
4 resources, or that --

5 MR. FORTUNO: I mean, it is largely
6 reassurance. I think that especially in the context of
7 things like an audit committee, the GAO and like
8 entities would be interested in whether the committee
9 is given the resources necessary to carry out its role.

10 MS. BeVIER: Well, then, wouldn't this be
11 something that the board ought to adopt as a general
12 policy for all of the committees, that they will all be
13 given the resources necessary to carry out their
14 functions, so that the board undertakes that
15 responsibility. It's not in the passive voice. That
16 seems to me to be much better, that the board undertake
17 that.

18 And this Resources business doesn't seem to
19 work very well as a part of the charter of the
20 committee. Is that something for the board? I don't
21 know. It's in all of the charters, so maybe we ought
22 to all think about it.

1 MR. FORTUNO: And typically -- again, I'm
2 sorry to keep referring back to the audit committee
3 charter, but that's the first we did. And we're
4 looking to see how that evolved for purposes of
5 figuring out what to do with the other drafts. In that
6 context, normally you have a budget provided to the
7 committee so that the committee is able to in fact
8 budget and retain consultants and the like.

9 I think that it was determined that in this
10 context with this board, that wasn't as appropriate a
11 mechanism as to simply have the committee look to the
12 board and the board authorize the committee's
13 incurrence of whatever the expense might be retaining
14 consultants.

15 And that's really what the Resource section
16 would normally address, is whether funding is provided
17 to the committee from which the committee could draw to
18 pay expenses, or if a budget isn't made available to
19 the committee, how the expenses would be paid for, what
20 arrangements would be made.

21 And so the Resources section, if you have one,
22 would ordinarily focus on that. So you're right, no

1 need to have what we have here. And if you want it to
2 have anything, you might have something addressing how
3 the various committees would be authorized to incur
4 expenses and have those paid.

5 CHAIRMAN HALL: Sarah?

6 MS. SINGLETON: I guess, given your
7 explanation of the language under Core
8 Responsibilities, I'm a little concerned that it says
9 "shall" for everything, but we're supposed to pick and
10 choose among them. So I would suggest it really should
11 be something like "shall consider" or some word like
12 that, some other word so that it doesn't look so
13 mandatory that we have to do all of these nine things.

14 MR. FORTUNO: Or "is authorized to undertake."

15 MS. SINGLETON: Right. Yes.

16 MR. FORTUNO: So that you're not required,
17 but -- we can certainly do that.

18 MS. SINGLETON: Yes. And maybe it made sense
19 in the context of the audit committee, or maybe we just
20 didn't think about it that much. But I would suggest
21 if the only reason we're doing something is it's in the
22 audit committee charter, we might need to look back at

1 that charter and see if it should be revised.

2 MR. FORTUNO: I'm sorry, Herb.

3 MR. GARTEN: We put a lot of time into it. I
4 can say that. I think, in reviewing what Congress is
5 expecting the audit committee to get involved in, that
6 the "shall" language is probably most appropriate.

7 MS. SINGLETON: I agree. When I read it in
8 the audit committee, it didn't bother me as much as
9 this does, for example.

10 MR. GARTEN: Well, the one place where we did
11 qualify it was the audit committee cannot retain
12 outside consultants without the prior authorization of
13 the board.

14 MS. SINGLETON: Perhaps if the audit committee
15 can't, this committee can't.

16 CHAIRMAN HALL: I guess another take on
17 Sarah's point is that it seemed like to me part of the
18 goal of the charter is trying to tell us as members of
19 this committee that these are some things that we have
20 a responsibility to always be looking at. It may be
21 that in a year we might not decide that there's a
22 policy in regards to grantee audits that we want to

1 look at, but it is saying that these are our
2 responsibilities. Don't forsake these things because
3 if you forsake these things, then the operation of the
4 organization may not be as effective.

5 So I guess I'm just saying that I'm not as
6 bothered by the "shall" connotation because to me it's
7 also speaking to us as committee members that we have
8 an obligation to a certain extent, even though I don't
9 think we would have failed our obligation if we chose
10 not to focus on it during a particular year.

11 MR. GARTEN: I viewed it as a checklist for us
12 to review and go over and make sure we didn't miss
13 anything.

14 MS. SINGLETON: Mr. Chairman, I think the
15 reason I suggested the words "shall consider" was to
16 get at the idea that you were talking about. We might
17 not have to do it, but at least we would consider this
18 idea.

19 CHAIRMAN HALL: Okay.

20 MR. MEITES: Mr. Chairman, my committee is
21 also going to consider its charter today, proposed
22 charter. And I think the experience of the audit

1 committee's charter has raised a point which your
2 committee might consider in considering Sarah's motion.

3 I believe it's important that all the charters
4 be harmonized at some point before they're formally
5 adopted. And I do not propose to ask my committee to
6 adopt its charter today. There are some other issues
7 with my charter. And I just wanted to put that idea
8 before you, that you might want to consider deferring
9 till all the committees have pretty much reached a
10 comfort level with their own proposed charter.

11 CHAIRMAN HALL: Well, that's an interesting
12 challenge. Are there any other -- holding aside the
13 "shall" versus "shall consider," are there any things
14 that are missing or other aspects of the charter that
15 are troubling anyone?

16 (No response.)

17 CHAIRMAN HALL: I guess what I would
18 suggest -- and going back to Jonann, on the audit
19 piece, were you really asking for that to be
20 eliminated, or did his response satisfy you in that
21 regard?

22 MS. CHILES: Vic's response satisfied me.

1 Sarah's language would give me more comfort if it were
2 inserted into that provision. But I understand also
3 the need to harmonize the language.

4 CHAIRMAN HALL: Okay.

5 MS. CHILES: I just worry that several years
6 from now, we'll have someone sending us a letter and
7 inquiring as to when was the last time you had item
8 No. (4) on your agenda and what have you done because
9 that's a rather important issue right now.

10 CHAIRMAN HALL: I guess what I would propose
11 as a way of trying to move forward and also do some
12 harmonizing is that we would -- and I'm suggesting that
13 someone propose this amendment -- that we go with the
14 "shall consider" language as a way of trying to move
15 this forward, and that we approve it with the
16 understanding that we will harmonize our charter with
17 those of the other committees once we get to the board
18 level and that discussion occurs.

19 MS. SINGLETON: I'll accept that as a friendly
20 amendment.

21 CHAIRMAN HALL: I don't know if the chair can
22 friendly amend, but --

1 MS. SINGLETON: Well, I'll friendly amend my
2 own motion.

3 MS. CHILES: I'll second that.

4 CHAIRMAN HALL: Okay. All committee members
5 in favor of the motion and the --

6 MR. GARTEN: What are we voting on?

7 CHAIRMAN HALL: We're voting on the charter,
8 with the understanding that the only substantive change
9 we're making right now is Sarah's, that the language
10 would be changed from "shall" to "shall consider." The
11 second condition under which we -- or I guess the other
12 condition that we are approving the charter upon is
13 that we will harmonize it with other committees at the
14 board level. So if there's something that is decided
15 at the board level that says all of the charters should
16 reflect the same thing, then we are open to doing that.

17 MR. GARTEN: Can I ask Vic for an opinion?
18 Does that word "consider" possibly give rise to someone
19 saying, you might be ducking an issue that should be
20 the responsibility of your committee?

21 MR. FORTUNO: I think that -- I hate to refer
22 back, but certainly that would be more of a concern in

1 the context of the audit committee. I don't mean to
2 suggest that the work of any of the other committees is
3 any less important. But I would not be as concerned
4 about it in the context of other committees.

5 I think that what would be important is to
6 have the "shall consider" or "as authorized to
7 undertake" or however we word it, the idea being to set
8 out these guideposts of what your jurisdiction is so
9 that it's clear what the responsibilities of one -- or
10 at least the authority or jurisdiction of one committee
11 is versus another.

12 I would not -- I think it's a valid point to
13 ask whether using the "shall" language alone is maybe a
14 little risky because it is strong language. It implies
15 an obligation to do, while the charter doesn't have a
16 time frame, so arguably, you don't have to do each of
17 these every year.

18 The "shall" language is fairly strong. So I
19 think that you probably are better off softening it so
20 that you clearly delineate what your authority is, what
21 your jurisdiction is, without necessarily obligating
22 you to touch each of these bases in a substantive way.

1 All you need to do is consider whether it's something
2 you need to work on that given year, and you'd have the
3 authority to undertake it, and the charter gives you
4 the authority.

5 MR. GARTEN: That answers my question.

6 MR. FORTUNO: I have one question, though, and
7 that is the point raised by the vice chair of the board
8 about the Resources. I assume that would be one of the
9 points that would be taken up in terms of harmonizing?

10 CHAIRMAN HALL: Yes. I saw that as in the
11 harmonizing area because she raised it as something
12 that's in all of the charters. And if we're going to
13 look at it at the board level, I think we need not make
14 a decision on it here.

15 So are we ready to vote? All in favor of the
16 motion with the friendly amendment, say aye.

17 (A chorus of ayes.)

18 CHAIRMAN HALL: Opposed?

19 (No response.)

20 CHAIRMAN HALL: It is approved, and we will
21 report it out to the board later on.

22 Public comment, if there is any?

1 (No response.)

2 CHAIRMAN HALL: Any other items to come before
3 the committee?

4 (No response.)

5 CHAIRMAN HALL: If not, I will consider a
6 motion to adjourn the provisions committee, and again
7 would like to thank all of our presenters, and
8 especially our special guests.

9 Hearing a silent motion to adjourn, the
10 meeting is adjourned.

11 (Whereupon, at 3:30 p.m., the committee was
12 adjourned.)

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