CHAIR JAMES: With that I’m going to turn to John and ask you to start with regulation.

DR. SHOSKY: Thank you, Madam Chair. Just a few comments to get us started. There is a first draft of this chapter out, and I would like to mention a couple of things about it, if I could.

One comment that we received from several people was that the Beltier document that was prepared for the Internet subcommittee was a very helpful document, and we should incorporate some of that material, in particular we should quote the progression of ideas in that document, and I tried to do that, to some extent.

I agree that it is helpful, and as you may know, there is some discussion about including that document on its own, in the appendix, later. So I tried to incorporate that document, and I realized maybe I should use more of it, in some people’s opinion. But I think you will see that I do rely on it.

The second point that I would make is that this is a tough chapter to write in many ways. One way is that it has to be readable to the general public, and the temptation is to do something like this in sort of a lawyerly way.

The history of this chapter has been that originally we would do part of the overview, and we would just have cursory discussion of the regulation. And then in an earlier report subcommittee meeting it was decided to write this out as a separate chapter. It would follow the overview in the arrangement of the final report, but that it was just to simply be a snapshot of regulation.
So the real temptation is going to be to try to put in, in my opinion, too much. And it may end up being too lawyerly and too scholarly. So I’m trying to hold the reins in on that.

However, having said that, number three, there is also a problem that we have been trying to compensate for, for the last few weeks, on this particular chapter that has made it difficult.

We were hoping to get some helpful material from one of the contractors. And when we realized that we weren’t going to be able to get that material, we ended up collecting a lot of it ourselves, and we have been going through it.

And I have to say that even if we had gotten the material, this process has been very good for us. In particular I have had a lot of sympathy for Commissioner Bible because I have been sitting, the last few days, reading through the Nevada Regulations, which were provided for us instantaneously, when we called for them.

And there is so much there, and the same thing is true in New Jersey, and Mississippi, and all the other states that have provided material to sift through.

And in the process of sifting through all of that information I realized that this temptation to want to throw in a great deal is manifest. And making the choices and trying to highlight this so that this can be a readable chapter will be tough.

But, again, the idea is to make it a snapshot. And, with that in mind, it really requires us to make, I think, some decisions about what to include and what not to include. And one of those decisions will be how much to talk about regulatory matters that don’t concern casinos, because as people write about
gambling regulation, there seems to be a focus on casino regulations and to explain the difference between, for example, federal oversight on some issues, and then state regulation which, as you know, is the primary source of regulation in gambling, on the other hand.

And so while many of the commentators talk about casino regulation, we will have to give some thought to how much of the lottery regulation to put in here, or in the lottery chapter. The same thing with pari-mutuel matters, how much to include here, how much to include in the pari-mutuel chapter.

So in our attempt to get a snapshot, I’m hopeful that what we will end up with is something that is readable and straightforward, and not necessarily cumbersome for the reader. And if we need to go into particular detail on an area of regulation, for example, say lottery regulation, I’m hopeful that that detail will come up in the lottery chapter itself.

But that is just my view in trying to construct a first draft, and I realize there is a lot of different ways to do this, and I’m very anxious to hear the direction that you want me to take.

CHAIR JAMES: With that I will open it up for discussion.

COMMISSIONER LEONE: I have a couple of questions, and some comments.

We had conceived of the ACIR document as a comprehensive statement that might be an appendix, would be in our report, and highlight it in the text someplace that people could go and find out everything one could reasonably ask about the nature of regulation of different kinds of gambling activities in the United States.
And now we are going to have something less than that, and what we have, I suspect, will be tinkered with until the very last moment. It is still the plan, though, to have that as an appendix that would be referred to, probably, at the beginning of this chapter, as a place to go?

Or do you think now it is some other kind of document that will have, that we will present in some other fashion?

CHAIR JAMES: That was the plan. We should probably let Dr. Kelly give you a little update on our latest with ACIR.

DR. KELLY: Commissioner Leone, you are right. ACIR was to provide us with three products. One was a comprehensive tally of all the laws and regulations pertaining to gambling, in a CD or an electronic data base. That is due next month.

The other, though, was to be a review of those laws and regulations, review and analysis of those laws and regulations. And, to date, we have not received that, even though we were supposed to have received that last -- they had a deadline to get that review and analysis to us last -- they brought down a document which they claimed was, in fact, that product.

It was absolutely unacceptable in that it was not, in fact, a review and analysis of all laws and regulations. In fact the document that they could use was simply a snapshot of some of the survey findings that they had produced, an absolutely different issue.

We let them know that that was unacceptable, that as far as we were concerned they had not met the terms of the contract, and we are working on that even now.

The third document, by the way, just to complete the picture with ACIR, is that they are also supposed to provide for
us a contrast of the regulatory oversight for Indian casinos and non-Indian casinos. And that, in fact, is due today.

COMMISSIONER LEONE: Just let me make a mechanical suggestion. Since we have an empty seat and microphone here, maybe as long as that is available, Tim could sit at that location.

It seems to me that we have two choices about this chapter, from our point of view. A person reading our report will reasonably expect to go to the regulation chapter and find a summary of what is going on, at least, in the United States.

They might expect to find our recommendations about how we think the regulatory regimes that exist should be changed, and what we would urge governments to do.

I think, in fact, as a practical matter, those are going to find their way into the individual chapters, because otherwise this chapter would then be, everything should be different that involves governmental action.

So the question I really have is, are we going to be able -- this is, you know, this is a teaser of what we have right now, in the sense that it has a couple of summaries of, brief summaries of when we talked about a couple of states that have a lot of gambling. But it is not the kind of chapter somebody could pick up and read and say, I now have a sense of what the range is of scrutiny that is applied to casinos, how different states approach lotteries.

Now, a lot of that is in the other chapters, and I think we have to come to some conclusion here about what this chapter is going to be, because it is obviously not going to be built in the way we originally thought, by reference to the ACIR research.
I have no fixed notion about what it ought to do, but if it is an essay about the regulatory history, or maybe, you know, maybe it could be a chapter that we return to after we have done everything else, and it could summarize some of the conclusions that we’ve come to elsewhere.

I think as it stands, and I’m sure John would agree with this, we wouldn’t want anybody to look at the table of contents and say, here is a chapter on regulation, I will go find out about regulation in this chapter, because you can’t do that.

CHAIR JAMES: That may be a structural issue that as we get to the other, but what is it?

COMMISSIONER LEONE: Maybe it is just an introduction to whatever other information we have assembled, and it is put back at the report. I don’t know.

CHAIR JAMES: Let’s do the hard one first.

COMMISSIONER LEONE: Well, I think that the hard one is, can this be an essay that characterizes the regulatory regimes in place in the United States for different kinds of gambling.

CHAIR JAMES: And at some point this Commission will have to speak in terms of, if we can come to some consensus, about what we want to recommend in that area. And we can -- if we can deal with that, then I think that we can talk a little bit about, structurally, how that ought to happen; whether it ought to be in one chapter, the appendix, throughout --

DR. KELLY: I agree, maybe that should be the last thing we turn to.

CHAIR JAMES: What do we want to say about that issue?

Yes, each of you.
COMMISSIONER LEONE: I think that the two hardest questions on regulation are judgmental, they involve a judgement about whether the casino type gambling that exists in some states, and on Indian lands, is regulated in a fashion that we think is appropriate, based on the Beltier document, and examples in New Jersey, and Nevada, and other places that are considered to have more developed regulatory machines.

The second question is whether we think all the examples of convenience gambling, including lotteries, there have been lots of others, which are essentially lightly regulated by states, ought to be approached in a completely different way.

There is a subpoint of this, the sports wagering, Internet, other kinds of gambling where we may have some recommendations that are, I would argue, somewhat different from regulatory recommendations.

I think those are two of the biggest questions we have today --

CHAIR JAMES: Not down the road, this is it.

COMMISSIONER LEONE: Where we stand on that. Personally I think the federal law, as it affects the Indian gaming, I have come to that conclusion from this experience, needs to be toughened.

CHAIR JAMES: Let that proposition sit there for a minute, and see if there is any response.

COMMISSIONER WILHELM: I came across an interesting document that I would call to the Commission’s attention, and although I have a copy of it, I don’t have it with me, unfortunately. I will try to remember to bring it tomorrow.

Monty Deer of the National Indian Gaming Commission testified recently before the Senate Indian Affairs Committee, as
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did a variety of other people. And someone sent me a copy of his written testimony in that regard, which I found quite useful.

I think there is an extent to which it probably differs somewhat from the conclusion that Richard and Bill just stated, but there is an extent to which it probably supports that conclusion that Richard and Bill just stated.

And I would just commend it to the attention to both Commission and staff, and as I said, I will try to remember to bring it tomorrow.

On that conclusion, and also on the structural issue that was being discussed a couple of minutes ago, personally I feel that I don’t know very much about gaming regulation, and I don’t consider myself to have any expertise in that area.

As a consequence of that lack of knowledge I have essentially punted, to be candid, in the discussions of the Commission’s Indian gambling subcommittee on the regulatory issues, and on the related issues of whether or not the Indian Gaming Regulatory Act ought to be amended.

And I would just ask whether, and maybe this is a matter that can’t be concluded about at the moment, but I would ask on the structural question, as well as on the substantive question, whether or not in the opinion of the Chair and the rest of the Commissioners, the question of the regulation of Indian gambling ought to be addressed in the regulatory chapter, or in the Indian gambling chapter.

To be frank, I think it highly unlikely that the Indian gambling subcommittee is going to reach a conclusion, within the subcommittee, on that issue, by accommodation of strongly held opinions, as well as in my case ignorance.
So I would be curious to know where people think that belongs, and the staff already has the testimony by Chairman Deer before the Indian Affairs Committee on March 24th. And, again, I would commend it to everyone’s attention.

CHAIR JAMES: Any response to that; where do you think that ought to be, do you want to handle those issues in that --

COMMISSIONER LEONE: Well, I think it should be in a separate chapter. There are a few other points I would make about our regulatory recommendations, and the regimes.

One is that they are freighted with federal issues. There is a few things that we can say, this is clearly the federal government’s responsibility. There are many things that we could say we wish state and localities did something differently, or we disapprove, or we approve.

This one there is a lot of federalism, and that is obviously in a lot of court cases, but this one at least we know there is a federal responsibility that is part of the package where a federal commission could say something. So I think it deserves some special treatment, separate treatment, because of that. We have to decide where we are going to come out in some of these federal regulation issues.

The second thing is there are a whole set of issues, I would argue, upon the area of public education, in which if our public education prompts a response, it will be from people on different sides of the argument that will then mobilize and get to results.

This one again, though, I think is different, in that there is an existing federal law, an existing federal agency that performs various functions. And I think maybe this does belong in that chapter.
COMMISSIONER WILHELM: In which chapter?

COMMISSIONER LEONE: In the Indian gambling chapter.

CHAIR JAMES: I would concur with that. Having said that, that is still the easy one. And I think a part of what I want to do today is to keep pushing us back to the hard ones.

COMMISSIONER BIBLE: My sense on the issue is that we are dealing, really, with four kinds of gaming. We are talking about commercial casino gaming, we are talking about horse racing, in terms of legalized gaming. We are talking about lotteries and tribal.

I think in lotteries and tribal, both of those instances, that breaks down as governmental sponsored things, and the government regulating itself. And, at least my sense is we treat lotteries and tribal and deal with the regulatory aspects in those particular chapters. In this particular chapter we talk about the regulation of casinos, the regulation of the horse racing.

CHAIR JAMES: I would concur with that, with the caveat that we say, in the introduction, that that is what we are doing, and why.

COMMISSIONER BIBLE: Yes, so people understand it. And I think it is kind of interesting, if you go back to --

CHAIR JAMES: Did you get that John?

DR. SHOSKY: I think so, but I just want to be sure. Would you say that one more time?

COMMISSIONER BIBLE: Well, I think we ought to deal with the lotteries and tribal gaming regulatory aspects in each of those, in each of those particular chapters, because they fall within governmental gaming, or the government in effect is regulating itself, in both of those instances.
In these instances the government is acting as a third party regulator, in both the horse racing, and to the commercial gaming industry, treat them somewhat differently.

I think the interesting aspect, and this kind of comes down to your efficiency and effectiveness argument, we need to make some comment about that, is that our predecessor commission, 20 or 30 years ago, that this was an area that they were concerned about, because of organized crime into the legalized gaming industry, repeated control of the illegal gaming industry, and they came to the conclusion that it needed a strong regulatory presence at the state level.

Now, we’ve heard testimony, virtually from every state regulator where we have gone, when we went to New Jersey we heard from the Commission, when we went to Illinois, we heard from the Commission; when we went to Nevada we heard from the Commission, when we went to Mississippi, we heard from the Commission.

I think we need, in this chapter, to kind of detail the regulatory efforts that have occurred over the last 20 or 30 years, and come to some sort of conclusion as to the effectiveness of the regulatory systems.

I don’t think the issue before us today is, can we regulate gaming, because we are going to come down and say, yes, you can regulate gaming.

CHAIR JAMES: You can do it, you can do it effectively, here are some models of how it was done, make some suggestions for states that are considering the --

COMMISSIONER BIBLE: That’s right. And the reason I asked Mike Bellinger to prepare that particular document was to develop the best practices, so there would be a body of information that would be available to --
CHAIR JAMES: Have you made any, have you given any thought about how to incorporate his piece into this particular chapter, the best practices and model?

DR. SHOSKY: Well, I think that there is a couple of things. What I did was, I got a separate section identifying it as a model, and then integrated portions of it into the chapter, and then in the chapter that piece, as itself, stands ready to be put into the appendix.

There is another way of doing it, and that is to -- some people would argue that we should attach it to the chapter, instead of having it separate in an appendix, that it should literally be one long footnote at the end of the chapter. That is something we can do, or we could just simply print it, in writing the guts of the chapter, and let it stand on its own --

COMMISSIONER BIBLE: Well, I wouldn’t put the entire document in there either as a footnote, or as a lone document within the chapter, which could make it sort of cumbersome. But I think there are some elements you can take out of there and describe what are the elements of a good regulatory system.

My purpose in asking Mr. Bellinger to do that was that over the years I have been visited by numerous delegations, not only from states within the United States, but from a number of foreign countries, when the countries in Africa started to legalize, they came to Nevada.

When New Zealand wanted to legalize they came to Nevada. When some of the states in Australia wanted to legalize, they come to Nevada.

Similarly, they go to New Jersey and they take a look at the systems, and they would go home and they would kind of adapt the systems to whatever fit their local needs best. And
they are interested in developing some basic tenets of best
dractices as to whether our regulators, ability to get documents
when you request them, in areas like that, and just detail those
in terms of the regulatory chapter.

CHAIR JAMES: John, it occurred to me that I don’t want
to throw you for a loop when we get to the end, but when we get
to the end of each section I’m going to ask you to sort of
summarize what you think you heard so that the Commissioners can
be sure you got what we discussed.

COMMISSIONER BIBLE: And in the material, I looked at
what they provided today, I think a CD-ROM that is machine
readable, that has a compilation of state statutes would help, it
would kind of create a library for people to go to, if they want
to take a look at that sort of thing.

There is a survey instrument on the effectiveness and
efficiency of regulatory systems, pretty rudimentary, they call
it Regulator, and asks if you are doing a good job --

CHAIR JAMES: And they said yes?

COMMISSIONER BIBLE: And they said yes.

CHAIR JAMES: Tim, do you think that ACIR is doing okay
on the survey of regulations, but on the interpretation and
effectiveness?

DR. KELLY: Well, Madam Chair, where they have really
fallen down is on their review and analysis of all laws and
regulations. They seem to have just -- that has just vanished
somewhere. And that is something we need to deal with very
seriously.

COMMISSIONER BIBLE: But the analysis really that
belongs in regulations is -- I think the greater utility is
trying to figure out how their value may work, it is like
analyzing the blueprints of airplane, you can build the thing out of balsam wood, or you build it out of aluminum, it is going to make a difference as to how the airplane flies, and its characteristics.

It is how the system operates, not how it looks on paper. I mean, you can go and work in all these cottage industries, and cut these things out into cookie cutter mold. They sound good when you read them.

DR. SHOSKY: If I could add something to this discussion. I mentioned this to Dr. Kelly yesterday. In working in this chapter I tried to cross-reference the regulations that we had, and material that we got from ACIR.

And as I mentioned to Dr. Kelly, there is some big omissions. And what I mean by that is some things that are legal in some states aren’t being noted in the material we are given, some things that are illegal aren’t being noted, and just -- I’m speaking merely for myself, but I question the accuracy of what we did get.

COMMISSIONER BIBLE: What do you have, a couple of instances?

DR. SHOSKY: A good case in point, South Carolina, because I wanted to know exactly how the laws were set up that would allow this sort of access and payout on the slots. And not only was that not mentioned, but there is nothing mentioned at all about the fact that legislation had to be passed to make this legal.

So that was the first instance, so then I just started --
COMMISSIONER BIBLE: I get the sense, at least, in South Carolina from my own individual that there is very little regulation, really rudimentary controls, at best.

DR. SHOSKY: But you probably remember that when this came up in Las Vegas we had to go find the statutory references in order to report back to the committee, and it is just not -- it just wasn't there.

So then I started double checking things on lotteries, and things like that, and there were some omissions.

COMMISSIONER BIBLE: If you take a look at the state statutes wherever casino gambling, or slot machine gambling is legal, you are going to find every state has a different definition of what constitutes a gaming device.

COMMISSIONER MOORE: In this old chapter, when we are talking about regulations, and when we are finding out, you know, that different states have different regulations, where are we going to come down as a Commission and say maybe what we think the regulations should be?

Now, that doesn't necessarily go in this, is this report goes not only to the federal authorities, it goes to the governors of each state. Then if we have an overall suggestion, somewhat, on regulations on how lotteries should be run, how a casino should be run, I think we need to do that.

Where would that come? I mean, I think that this Commission, that this is exactly what we have to say how is gambling going to be regulated, and I think we should have a recommendation on how it should be regulated.

COMMISSIONER BIBLE: I think in each chapter you --

COMMISSIONER MOORE: Each chapter?
COMMISSIONER BIBLE: In terms of commercial gambling, you could mention best practice and recommendations, and independence of regulators, sufficient staff, access to books and records. There is a laundry list of things that could be incorporated in this chapter.

CHAIR JAMES: Let’s talk about the elephant in the parlor.

COMMISSIONER BIBLE: Okay.

CHAIR JAMES: It is there, it is staring at us. What does this Commission want to say about federal regulation, or at least federal regulation or not, or state, or --

COMMISSIONER BIBLE: I would say, based upon their track record, where they do have responsibility is in tribal gaming, and they have absolutely abrogated the responsibility. Look at the state of California.

CHAIR JAMES: Are you talking states, or are you talking --

COMMISSIONER BIBLE: I’m saying tribal gaming. The federal government has absolutely abrogated their responsibility where they have jurisdictional control. Tribal gaming is a perfect example. California, we are going to have 14 or 15,000 illegal slot machines. The same thing is happening in the state of Washington, Oregon.

COMMISSIONER DOBSON: Bill, are you suggesting that that be said in the report?

COMMISSIONER BIBLE: What I said.

CHAIR JAMES: Anybody want to disagree with that? I wouldn’t, incidentally, but I want to know if anybody else would.

COMMISSIONER WILHELM: I would just like to note for the record that because of unexpected surgery yesterday
Commissioner Loescher, obviously, is not here. And obviously Commissioner Loescher might not agree with that. I assume he would not.

I think that is self-evident to us all, but I --

CHAIR JAMES: Having said that, let me say that there are several Commissioners who wanted to be here, but could not for a variety of reasons, and they know that they will have the opportunity to speak, very clearly and loudly, on all of these issues.

COMMISSIONER WILHELM: To that end it is my understanding, though, that although we are trying to direct staff, we are not formally reaching final conclusions?

CHAIR JAMES: We are not reaching final conclusions, we are having a discussion, and asking them to put some words to paper that then we can respond to and edit.

COMMISSIONER WILHELM: On that issue I was concerned about the structure and tone of this draft of this chapter on this very point, because this chapter is drafted such in the beginning almost as though the federal government should be regulating gambling.

And I do not sense that that is the consensus here, and perhaps I’m wrong. Speaking only for myself I believe that with the exception of Indian gaming, which I think constitutionally has to be regulated by the federal government, except insofar as the federal government permits tribes and states to agree that the states will regulate it, and with the exception of Internet gambling, I believe that there is a consensus in the country that gambling regulation ought to be done by states, and I think this Commission ought to endorse that.
I think Commissioner Bible is right that the federal government has no demonstrated capacity to regulate the gambling effectively, so it ought to regulate effectively those areas that it already has responsibility for, or intrinsically has responsibility for, like Internet gambling and not try to usurp the functions of the states with respect to casino gambling, in particular.

And I think that the report ought to say that, that the tone and structure of the existing draft chapter infers the opposite. And to that extent I think it is wrong.

I would add, however, to Commissioner Bible’s construct about the four areas of gambling. There is an area, some of which is legal, some of which isn’t, and some of which is gray area, that is not casino gambling, but that is properly regulated by states, it has to do with video machines and so on.

And as we discussed before, there is a tremendous amount of question, for example, in South Carolina about the efficacy of the regulation of that which is legal. There is an enormous amount of question about whether the states are adequately policing that which is not legal, or that which is in the gray area, all of these machines that proliferate all over the place.

And I think it would be remiss of us if we didn’t comment on that, and if we didn’t strongly recommend that states get a hold of those problems.

COMMISSIONER LEONE: Look, I’m not a cynic, but a cynic would say that regulation at the state level is dominated by two concerns, and these are -- one concern is defensive, I would say. People in politics can’t stand the heat that is generated when crime is involved in gambling.
So regulation is driven by the fact that whether the
government owns the gambling enterprise, or whether it is a
commercial enterprise that is being regulated, politically it is
very costly not to keep crime out, so most of the regimes have a
variety of mechanisms which have been relatively effective, as I
understand it.

COMMISSIONER WILHELM: Meaning organized crime?

COMMISSIONER LEONE: Yes, about keeping crime out. The
second I would call, maybe, offensive part, and I mean that in
the defense/offense. I find it offensive, but other people -- I
just mean it in kind of -- is making sure that the state gets its
fair share of the cut, and therefore intense accounting like
activities to ensure that its commercial enterprise, the state
will get the right amount of tax out of it, and if it is a state
run sponsored gambling, such as lotteries, insuring that the --
or that the state is competitive and it gets enough lottery money
spent in its own borders.

The Indian-American gambling is more complicated,
because in that one the federal government in a sense has to play
a role in order to legitimize the notion that these are
governments that can’t be regulated by states, directly under
ordinary circumstances.

Now, the reality is that we have developed in some
places, as far as I can tell, pretty good structures for policing
gambling to keep organized crime out, and pretty good structures
for avoiding fraud, and accounting for the money so that we can
tax it, or collect it.

An example of that, as I spoke, there aren’t that many
-- so we are sort of dependent on that, at the outcome. There is
bound to be division about whether we need to go through with that.

And, again, I’m putting the complexities of the Native American gambling over to the side. And I mean by that if the Commission wants to go further and argue that this is not effective enough, or not providing the public with enough information, whatever the answer might be.

And that is, you know, the argument on one side of that argument is the view that the states are sovereign and they are democratically elected, and who are we to tell them what to do. And there is no role for the federal government, and on the other side it is that the states are -- some of them, or all of them, are not doing a good job on some things, and do we have a role, and a responsibility to tell them the things we don’t think they are doing well, lotteries as an example.

And that maybe we -- maybe national interest, an overriding national interest in certain things, being taken seriously at the national level.

Now, I don’t know how other people feel about that, but I feel that we -- those last two points I made should be central to our report, that our report should make clear. I endorse that we don’t think that the states are doing a satisfactory job in a variety of areas --

CHAIR JAMES: We say that all states --

COMMISSIONER LEONE: Well, states that have gambling, obviously I wouldn’t --

COMMISSIONER BIBLE: You are not talking about Hawaii or --

CHAIR JAMES: Are there any that you would say --
COMMISSIONER LEONE: I think that some are better than others, but in the area of seeking gambling revenues, particularly for lotteries and convenience gambling, I haven’t heard of a single example of a state that I think is doing well.

COMMISSIONER WILHELM: First I, although again I’m not a regulatory expert, I believe it would be fair to say, Richard, that there is a third area that is presently construed as part of the regulatory objective, at least in the states like Nevada, and New Jersey, and Mississippi. And in addition to the two that you described, you described the organized crime concern, which I agree that that has been a driver of regulation as it is presently practiced.

You described the question of ensuring the accounting of money so that it can be taxed, and I agree with that, as well. The third area that I think is fair to say is pursued by the present regulatory mentality at the state level, at least in those kinds of states, is the integrity of the games, which I think is separable from the issue of whether the money is being accounted for.

And I think it is fairly well agreed in those kinds of states that it is in the best interests of the industry, and the state as well, that the games are assured to be honest. So I would add that as a third element of the existing regulation.

I think that it is relatively easy to separate out two things that I thought were running together in your comments, although I may have misread them. One question is whether this Commission ought to be recommending additional types of things that regulators should be doing.

In the past you have talked about disclosure of certain things, for example. It seems to me the Commission could make
recommendations like that, separate and apart from the state’s rights issue. It doesn’t follow, to me, that if we -- if the majority of the Commission, or all of the Commission thinks that certain kinds of things ought to be done from a regulatory standpoint, that therefore the federal government ought to do it.

I think, though I could be wrong, that there is a consensus of the Commission that states, in fact, should regulate gambling within their borders, except in the two categories that we have, in effect, set aside as being uniquely federal.

And I think the report, in my own personal view, the report should say that, the report should say that states are best equipped to regulate gambling within their borders, with the exception of Indian gambling, for constitutional reasons, and Internet gambling for technological reasons.

And in my mind that is quite separate from whether we ought to be recommending, because after all we are supposed to recommend not only to the federal government, but to the governors.

So I think that if there is other things we ought to be recommending, that I for one would argue that we should do so in the context of, specifically, asserting that state regulatory oversight makes the most sense.

COMMISSIONER LEONE: Let me throw out a specific idea, because we have talked around this federal thing. And, again, putting aside things like the Internet, or the current law that governs Indian gaming should be changed.

Going back to the Key-Faurber Committee, through our predecessor, this report, and other hearings, I think the federal government can serve a useful, and indeed essential role in this
area by holding up state regulation, or state activities to the light, bringing a perspective to it.

I’m impressed, we are all disappointed in the lack of continuing research on gambling. And this is still a half-baked idea on my part, an idea in formation.

But I have begun to wonder if there shouldn’t be a continuing federal role to study and report to the American people about gambling in the United States. I used the Commerce Department --

COMMISSIONER BIBLE: There must be, that is why we are here.

COMMISSIONER LEONE: Well, but this is an unusual Commission. I used the Commerce Department in my little memo I sent around because the people on both sides of the issues use Commerce Department information, and depend on it, if they are going to talk about the economy, and how things are going, and whether there is productivity, or what is happening to savings and investment, a variety of other things.

I see this as a kind of minimal federal role, but a role no one else will play, if there -- it doesn’t involve direct regulatory activity. There would plenty of people in the states who I think would object to having to report, needing to have information available, to have this kind of activity occur on an ongoing basis.

But I think that --

CHAIR JAMES: You see that as a repository of information, or as --

COMMISSIONER LEONE: And a publicizer of information, and a place where there would be sort of a national forum, an ongoing conversation about this. I think it would be very
useful. I think it would have been more useful if we had started 20 years ago, where nobody was going to get a cut.

I think the federal interest, again, has tended to be because of the little cut, if you will, because they didn’t get any part of the pie, only the crime stuff, which was politically and certainly newsworthy. There should have been a lot more interest in everything else.

CHAIR JAMES: Without having thought that through a lot, hearing it for the first time, my first reaction to that is by putting it in Commerce, and talking about Commerce, we immediately go to the economic, so --

COMMISSIONER LEONE: I wasn’t saying we should put it in Commerce, I was just using that as an example of an agency that provides information that everybody depends on to argue about stuff in economics.

I don’t know where this -- I mean, this maybe should be --

CHAIR JAMES: Well, I think one of the things that we have talked about before is the lack of information that is out there, and we wish that HHS did in their annual surveys collect data and information so that we could have that kind of data to look at things like pathological gamblers.

COMMISSIONER DOBSON: I apologize for missing your opening remarks. The ground rules here today are everybody is free to participate, or just --

CHAIR JAMES: Absolutely.

COMMISSIONER DOBSON: -- the subcommittee?

CHAIR JAMES: Everybody.

COMMISSIONER DOBSON: One area that, based on the testimony we have heard, that I see the federal government having
a role, and it is problematic, I recognize that, it has to do
with truth in advertising.

And I don’t know whether, you know, we run into
impossible state’s rights issues or not. And I’m not referring
to the kind of regulation that the state ought to do within its
own borders, but specially the state run lotteries, which lack
oversight, it would appear, in the way they are advertised, and
the way they function.

And I don’t know whether it is possible, I don’t know
what the mechanism would be, but I would sure like to see that
addressed in our report, because there are abuses there.

CHAIR JAMES: Well, I hear three things out there right
now. One is the gathering of information on the economic and on
the social impact of gambling, Commerce, HHS, whatever is
appropriate.

The third thing I hear is, is there a federal role to
be played in advertising. And regulating, is that what you are
suggesting Jim, regulating state advertising?

COMMISSIONER DOBSON: There are statutes, obviously,
that require truth in advertising but they don’t apply, if I
understand the law, they don’t apply to the lotteries, where the
states have an interest in, maybe, not complying to the higher
standards of those statutes.

And I think that ought to be addressed, because there
is abuse.

COMMISSIONER BIBLE: Well, we are kind of changing it
here, I believed those advertising attorneys that appeared before
us, at our last meeting, to brief that particular issue as to
whether or not you can make applicable those federal laws to a
CHAIR JAMES: May I suggest this? That at least in this chapter if we do anything we -- because we do have staff doing advertising, that if we say anything we refer to that, and we get that information, and we see what we can do.

COMMISSIONER WILHELM: I agree. I would agree with the thrust of Richard’s point. I think that the more information the better. I also agree with you, Kay, that the question of who does it, inevitably will have an impact of where its focus is.

So I don’t know where it ought to go, if you put in NIH it has one kind of a focus, if you put it in Commerce it has another kind. So I don’t know the answer to that.

But I certainly agree with that point. But, again, I don’t understand what that has to do with regulation. I mean, I do -- I think every one of us, based on the time that we have been on this Commission, agrees that there is not remotely enough information and knowledge.

And some of that is data collecting, and some of it is research. In my mind that is a separate question from the question of whether we ought to affirmatively endorse the state’s role in regulating gambling aside from those other two categories.

CHAIR JAMES: I think we sort of slid into that from what is the federal role in this, in discussing what the role is in terms of regulation.

COMMISSIONER BIBLE: I think Richard’s concern, and I don’t want to speak for Richard, but his concern seem to me that we are going to be so broad in our focus, as to the federal government’s presence on the regulatory chapter, that we will be excluding any presence anyplace else, and that certainly was not
my intent, because I think there is clearly a federal role in terms of gathering data.

COMMISSIONER WILHELM: I agree.

COMMISSIONER BIBLE: And providing information, and things of that --

CHAIR JAMES: Right.

COMMISSIONER BIBLE: My sense is we have a lot of people here before us, all the way until June 20th, until the death of this particular Commission here, and go about our merry way, and doing exactly what they want to do.

COMMISSIONER LEONE: I certainly intend to.

CHAIR JAMES: Well, you know, we do have that chapter on --

COMMISSIONER BIBLE: So we are going to talk about that, at some point, I assume?

CHAIR JAMES: Absolutely, on future research, and at several points along the way of the Commission we have talked about who would be the appropriate parties to produce that kind of research, and to produce that kind of data.

And I think at that point we can talk about what the federal government’s role ought to be.

COMMISSIONER LEONE: That’s right. But it is also relevant to where the federal government actually has a regulatory role. Personally the thing that bothers me most about the federal role in gaming is the lack of clear, comprehensive information about what is going on.

Because I believe government and democracy work best when the information is out there, and the people and the political process can respond to it. And the same thing is certainly going to be true in the Internet, where it is almost
impossible to get information, and telephonic gambling and other things, and I just think getting the information out there is kind of governor with a small g, regulator on behavior, as it works its way through the political process, people will react to that, and things will happen, or not happen.

COMMISSIONER BIBLE: Well, I would concur with John’s comments in terms of the federal regulatory role, and the federal role at least in terms of this particular chapter, and the regulation of gaming, really there is a federal presence because of constitutional reasons and tribal gaming, and there is a federal presence necessary, I think, in terms of the Internet, which is driven more by the technology than anything within the constitution. The states simply don’t have the ability to perform that function effectively, and the federal government does have that particular ability.

And then after that I don’t believe we know much about it, but when we get to the other chapters I don’t --

CHAIR JAMES: Except for the advertising piece --

COMMISSIONER BIBLE: And the advertising piece that flows throughout the various chapters. When we get to either lottery or advertising we can pick up, we talked about that in the last Commission, there is unanimity amongst the Commissioners as to some of the advertising practices of the lotteries, and they need to be common.

COMMISSIONER DOBSON: It is not uncommon at all, but --

COMMISSIONER BIBLE: -- more in common --

COMMISSIONER DOBSON: -- federal role.

COMMISSIONER BIBLE: And I don’t want to minimize the federal role, because the federal role, at least in Nevada, was very helpful in cleaning up some of the problems. I’m really
fond of saying that Nevada cleaned up gaming because of the will of the state, the federal role in terms of their abilities to wire tap, and the Kansas City trials, and catching a number of people skimming, and some pretty good dealings of the people who were operating in Nevada for years.

So there is a federal role, but it is more in the law enforcement area.

COMMISSIONER WILHELM: At the risk of being presumptuous either toward the Chair, or towards the report committee, or towards the staff, or most importantly toward Commissioner Bible, my reaction when I read this draft was that I wished Bill Bible would draft this chapter, and I’m not being facetious.

I think Bill has a tremendous handle on this stuff, and I realize we are way far behind here. So I would suggest we subcontract this job to Bill.

CHAIR JAMES: Bill is going to have a very full plate in the next few weeks in terms of -- and he has generously agreed to spend some time doing just that.

COMMISSIONER WILHELM: Great.

CHAIR JAMES: What else do we want to say about this very important issue of regulation? We talked about best practices and the piece we are getting from -- do we want to show any worst practices, some concerns?

COMMISSIONER WILHELM: Sure, just put South Carolina.

COMMISSIONER MOORE: You know, the thing that disturbed me a little bit last week, I guess I should have already known this, but I don’t know whether this would come in regulations or not, when we talk about the people that come in and run state lotteries, how they are chosen, what their fees are, and I have
never seen this in a paper in my life, the companies that come in and run these lotteries for people.

You know, if you have a professional group to come in and help you raise money for a church, by God, they charge you to raise the money. And I don’t know whether that would be on this regulation or not, what we would recommend anything about that.

COMMISSIONER BIBLE: I think that is all available, that is all public record. These contracts are typically bid award, it is a state enterprise, you can find that information. There may be a paper that suggests you can’t get it, but it is public information.

COMMISSIONER MOORE: Okay.

CHAIR JAMES: And that is a big issue that we have allotted some time to talk about in the lottery, so maybe we should -- whatever happened with G-Tech, by the way?

DR. KELLY: G-Tech has been invited to come present to us at the next meeting, they have expressed some interest, and we are negotiating with them now.

COMMISSIONER BIBLE: Why are we negotiating, they either show up or they don’t show up.

COMMISSIONER WILHELM: Maybe they want a paper bag over their head. Just kidding.

CHAIR JAMES: John, if you had to summarize what you think you heard in the discussion in the last few minutes, what would you say?

DR. SHOSKY: Well, by my count seventeen things, is what I would say. And that is in the order of presentation, it is not in the order of subject, or anything.

To start off with, and please excuse me if I have trouble choosing the right words as I go through this, but to
start off Commissioner Leone was talking about that there needs
to be a judgement that certain types of gambling are
appropriately federal, and --

CHAIR JAMES: I wouldn’t necessarily assign
Commissioner names because, what I look for, consensus as we
speak. And hearing no objections tend to move forward in the
discussion.

So what I’m looking for now is to see if you have been
able to capture the consensus of what we said. Understanding,
for those of you who are listening, that all that means is that
he is going to produce his draft, that we then have the
opportunity to respond to. Those who disagree can still say so,
we can still mark things out, it can still be edited.

So it would be premature to make any other comment
beyond these are just some directions given to staff about how
they may want to develop the next round of drafts. That is all
we are saying here at this point.

Having said that, John?

DR. SHOSKY: Thank you, Madam Chair. There seems to be
certain types of gambling that are inherently federal; tribal
gaming, Internet. There seems to be a consensus that the federal
law on tribal gaming, IGRA, needs to be strengthened at the
federal role. Also --

CHAIR JAMES: If you hear anything you object to, or
you don’t think he is getting right, please stop and jump right
in.

DR. SHOSKY: There is also some consensus that in this
chapter we need to mention four types of gambling. And what I
mean by that is commercial casino, horse racing, lotteries, and
tribal.
That primarily the regulation of lotteries and tribal
will be dealt with elsewhere, and that this chapter will
primarily, with that caveat at the beginning, concentrate on
commercial casino and horse racing regulation.

We should highlight best practices, was mentioned
several times. We also need to indicate that the federal
government has abrogated responsibility in terms of tribal
gaming. We need to change the structure and the tone of the
first draft to make it clear that states are the appropriate
regulators for what they regulate at the moment.

That we should have a very strong statement that states
are the appropriate regulators for what they regulate at the
moment, and that aside from the things that are inherently
federal, states should regulate gambling.

There is also a consensus --

COMMISSIONER BIBLE: And I think as we go through it we
want to talk about the ability to regulate, and distinguish that
from the policy -- you know, I think that is a very clear
distinction. Not necessarily abrogating just simply saying that
political decision, or policy decision is made just to engage in
-- gaming can be regulated.

CHAIR JAMES: Very important point.

DR. SHOSKY: Then there was the point of view that has
been restated in several different ways, but it seems to be
something like this. That we need to indicate states, while they
are the appropriate regulators, are not doing a satisfactory job,
that there is more that needs to be done.

That there is the realization that there is political
costs on the state level. It is hard to keep organized crime out
when it is just the states going it alone. Is that --
COMMISSIONER BIBLE: I don’t know where any of that came from. Run that by again?

DR. SHOSKY: This was a comment made about political costs on the state level, and then hard to keep --

COMMISSIONER LEONE: My comment I made was that because the cost was so high, states have been quite successful in fighting that, as far as we could tell.

DR. SHOSKY: Great, thank you.

COMMISSIONER BIBLE: I guess what you are suggesting is that states wouldn’t do it on their own, unless they are concerned, they are going to let the federal government come in and do it?

COMMISSIONER LEONE: I was just indulging in a momentary weakness for cynicism about political motivations.

COMMISSIONER DOBSON: You are a cynic.

COMMISSIONER LEONE: Most people would do it on their own.

COMMISSIONER MOORE: If crime is not -- I mean, if crime was in, the states would stand a strong chance of not wanting gambling. I mean, they would lose revenue, wouldn’t they?

COMMISSIONER LEONE: That is even more cynical.

DR. SHOSKY: I will just leave the cynical part of my notes here.

Then it would segue into --

CHAIR JAMES: I think probably just deleting it.

DR. SHOSKY: There needs to be better accounting of money for taxation purposes, and others.
COMMISSIONER BIBLE: I think that refers, probably, to tribal gaming, or is it a comment that someone made about lack of information? It was either Richard or Dr. Dobson.

COMMISSIONER MOORE: I would like to know what rationalization came out of Richard’s dissertation, there.

DR. SHOSKY: I still need to delete that.

CHAIR JAMES: You are still --

DR. SHOSKY: I got you, okay.

CHAIR JAMES: Keep the button down for a while.

DR. SHOSKY: Got you, okay, thanks. Then I have this underlined, so I’m pretty sure about this. We should recommend that certain things that regulators should do, and that is part of the best practices argument, too. That states regulate gambling within their borders, that states are best equipped to regulate gambling within their borders.

The one thing that the federal government can do is to hold regulations up to the light to examine them. Then there was the whole informational argument about who should --

CHAIR JAMES: Did we get any consensus on that some states do a better job than others, but all could stand --

COMMISSIONER BIBLE: Well, I don’t know that we gathered information in that area. I mean, that is my sense that --

CHAIR JAMES: It is a sense that --

COMMISSIONER BIBLE: Like tribal governments, I think some states do better than other states, and I could name a couple of states that are close to Dr. Moore that have some difficulty. One state has some difficulty on regulations, they look good on paper, but it doesn’t fly quite right. It is kind of a local custom.
DR. SHOSKY: Then there is the information on who should collect what information and disseminate it.

I noted --

CHAIR JAMES: What did you think you heard on that one?

DR. SHOSKY: -- a discussion on Commerce, and here is what I’ve got. Possibly Commerce could collect economic and social --

COMMISSIONER LEONE: I don’t think we need to add that in this particular chapter. It seems to me in some later chapter we are going to talk about it.

CHAIR JAMES: Remember, my suggestion was that further research, and collection of information and data, that perhaps that ought to go --

DR. SHOSKY: And the HHS part of that as well, right?

CHAIR JAMES: Several times we heard about the household survey, or other means of collecting data and information that would be helpful.

DR. SHOSKY: Then there was the truth in advertising about lotteries.

CHAIR JAMES: And we talked about that being over in the advertising.

DR. SHOSKY: Right. And then the final consensus argument I have got is that we should not exclude the appropriate federal role, either. We are delineating that states should be the proper regulators, we shouldn’t, on the other hand, indicate that the federal government scale back its role in what it is involved in.

CHAIR JAMES: Confusion?

COMMISSIONER WILHELM: It sounds to me like an extrapolation from your last comment about the fact that the
federal government has certain ancillary things it can do to help
the states in trying to enforce, but I didn’t hear it the way it
was written, no.

CHAIR JAMES: Say it again, one more time, the correct
way that you would like to see it stated.

COMMISSIONER BIBLE: Well, it seems to me that the
federal government, we delineated two areas of federal
responsibility, one being tribal, the other the Internet. There
is some ancillary responsibility in terms of law enforcement,
where they provided assistance to states, tribal governments, and
the law enforcement area, they have been helpful.

CHAIR JAMES: What is the turnaround time on
transcripts, by the way?

DR. KELLY: It is ten days, so we just got in the
transcripts from the last meeting.

CHAIR JAMES: The reason I asked this is because there
is a great deal of pressure to capture it accurately. But we
will, at some point, have a transcript to be able to go back and
look and see if we did capture it --

DR. SHOSKY: Madam Chair, may I make a suggestion?

COMMISSIONER BIBLE: And you also need to add, you need
to make sure that you highlight the policy decision. I think we
need to make a determination that if the policy decision is made
to legalize gaming, it can be regulated, specially -- it can keep
organized crime out.

The policy decision we are not addressing at this
point.

CHAIR JAMES: You want to put that in this chapter,
that if a state decides to do that, it can effectively do that?
COMMISSIONER BIBLE: Yes, I think that is conclusion of regulation. That is what we were talking about.

CHAIR JAMES: Is that a consensus, does anybody disagree with that?

DR. SHOSKY: Just for my own notes could you say that one more time, I just want to make sure.

COMMISSIONER BIBLE: You want to draw a conclusion that if a policy decision is made, whatever that process is by which it gets made, is made to have legalized gambling, that it can be regulated, it can keep corrupt elements out, certain policy roles, fairness of games, and --

CHAIR JAMES: Maybe if it were stated strongly in the light, this not being the only policy decision, there are other things to be taken into consideration.

COMMISSIONER LEONE: I think Bill is just saying if you decide to do gambling you can -- I mean I guess I’m not convinced that the -- I guess I’m not sure that this is the right place for it, but I’m convinced on the other side of -- that if you make the decision to do it, and by you in this particular case I’m talking about the government, I’m convinced that the addiction rate for governments began in the 100 percent, whatever NORC finds about individual, I think the addiction for government is 100 percent. And I think that the percentage of governments who become what we learn to call chasers, pursuing ever more elusive jackpots, is nearly 100 percent.

So that is a separate, but that is not a regulatory issue, that is a consequence of a policy decision which I hope we will discuss in some length at another part in the report.

COMMISSIONER DOBSON: I don’t want to beat this advertising thing to death, but as I think about where that is
going to be, I think my concern is that people will read this
section with regard to federal involvement and may never get to
the other portions.

I recognize that what I’m recommending ought to be in
the advertising section, but I think there ought to be some
reference to it in this chapter so that it is clear we have a
concern there.

CHAIR JAMES: Yes, I think we said that there could be
a reference statement, where we make the statement and then refer
to that.

CHAIR JAMES: That is fine.

CHAIR JAMES: Well, I think this is probably as good a
time as any to close out this particular portion of our
discussion. I see, by our schedule, we are supposed to have a
break here.

We will take a ten minute break, and get back together
at 11 o’clock.