

**MINUTES OF THE DECEMBER 4, 2006, MEETING
OF THE
SUPREME COURT OF GEORGIA
EQUAL JUSTICE COMMISSION
COMMITTEE ON CIVIL JUSTICE**

The sixth meeting of the Supreme Court of Georgia Equal Justice Commission Committee on Civil Justice was held on Monday, December 4, 2006, beginning at 10:00 a.m. in Meeting Room 3 of the State Bar of Georgia Headquarters, 104 Marietta Street, Atlanta, Georgia. Marc Gary, Chair, presided.

Introduction of Bob Echols

Vice Chair, Anne W. Lewis, introduced the Committee's first speaker, Bob Echols, the State Support Director of the American Bar Association's ("ABA") Resource Center for Access to Justice Initiatives.

Presentation of Bob Echols regarding The ABA 10 Principles of Civil Legal Aid Delivery

Mr. Echols advised the Committee that he has been following the access to justice movement in Georgia for about five years. He was familiar with the work of the Justice Builders and had worked closely with Bucky Askew on those efforts. Mr Echols met the Committee's staff person, Karlise Grier, approximately five years ago at the first meeting of Access to Justice chairs in Cleveland and met Chief Justice Sears two years ago at the Chief Justices' meeting in Austin and that he had met Committee Vice Chair, Anne Lewis, last year in Philadelphia at the Access to Justice chairs meeting. Mr. Echols recently traveled to North Carolina, South Carolina, and Mississippi to work with the access to justice commissions in those states. According to Mr. Echols, there are many exciting things, with respect to access to justice issues, going on around the country.

Mr. Echols' job is to provide support for the committees throughout the country, including the Georgia Committee. He hopes to see some of the Committee members at the Equal Justice Conference in Denver in March 2007.

Mr. Echols told the Committee about the ABA's Resource Center for Access to Justice Initiatives, a new ABA endeavor. The ABA had a role in three significant events in the access to justice movement. First was the creation of the Legal Services Corporation ("LSC"), which the ABA promoted and supported in the 1970s. Second was the establishment of IOLTA [Interest on Lawyers' Trust Accounts] in the 1990s, which grew from a recommendation of an ABA commission. Third is the involvement of state bar associations and state legislatures in the access to justice movement. In addition, Mr. Echols announced that thanks to the leadership of immediate past president Michael Greco, the ABA is elevating Mr. Echols' office from an access to justice project to a resource center with staffing and more institutional support for nationwide access to justice initiatives. The Task Force on Access to Civil Justice, which was established during Mr. Greco's tenure, recommended the creation of the resource center. In addition, in August 2006, the

ABA endorsed the right to counsel in certain civil cases, also known as the civil Gideon [Gideon v. Wainwright, 372 U.S. 335 (1963)(state courts are to provide lawyers in criminal cases for defendants unable to afford their own attorneys)]. The kinds of cases in which the ABA endorses a civil right to counsel are cases in which fundamental rights are affected and are as follows: housing cases, education cases and cases that involve family integrity, safety issues and health issues. In addition, in August 2006, the ABA House of Delegates approved ten principles of a civil legal aid delivery system which were developed by a presidential task force, the Task Force on Access to Civil Justice. The Honorable Howard H. Dana, Jr., Associate Justice of the Maine Supreme Judicial Court, chaired the Task Force. Mr. Echols stated that Justice Dana has provided leadership on access to justice issues both in Maine and nationally. Other members of the Task Force included Honorable Robert M. Bell, Chief Judge, Maryland Court of Appeals; Professor Peter B. Edelman, Georgetown University Law Center; and Phyllis Holmen, Executive Director, Georgia Legal Services Program.

One of the items developed by the Task Force to assist planning groups, stakeholders, and others engaged in statewide planning-and-oversight efforts was a “self-assessment” tool. This is a simple tool that states can use to assess their systems. First, Mr. Echols highlighted the ABA’s principles related to planning and stakeholder engagement. In planning a state’s system for the delivery of civil legal aid, the planners should attempt to engage in statewide planning and oversight of the system. Such a system should include mechanisms for coordination and collaboration among stakeholders, for communications/public awareness initiatives, for identifying legal needs, for search and evaluation.

Another principle focuses on the importance of participation from the bar and the judiciary in providing leadership for the planning and in the oversight process. The organized bar should play a special role in maximizing pro bono. Three of the ABA’s principles relate to stakeholders and providers. These principles encourage states to engage all stakeholders in the process, including legal aid providers, law schools, the executive and legislative branches, and the private sector. In addition, the principles encourage states to consider as part of the system all legal aid providers, including legal aid providers, private attorneys (pro bono/compensated), court personnel, law school clinics, and human services agencies.

Second, Mr. Echols reviewed the ABA’s principles related to the delivery system itself. The ABA’s principles endorse the inclusion of all persons in a state’s system for the delivery of civil legal aid, including those with limited English proficiency, institutionalized people, the elderly, the disabled, and those with geographical challenges. A system for the delivery of civil legal aid achieves this goal if it serves all the low-income and vulnerable populations in the state, provides a full range of services in all forums and no one is excluded because of status. In addition, the state’s planners work to overcome special barriers that prevent access to the state’s delivery system. The delivery system should provide a full range of legal services from direct representation to brief legal advice in areas including systemic advocacy, administrative advocacy, and legislative advocacy. Civil legal services should be fully accessible and uniformly available throughout the state. The availability of legal services should not be dependent on where in the state a person lives. Making

services uniformly available throughout the states is one the most significant challenges the Committee faces in Georgia.

A third principle of the civil legal aid delivery system is that the system effectively use all resources, including financial and in-kind resources, and volunteers. All of the civil legal aid delivery system should be coordinated on a statewide basis, though not necessarily implemented on a statewide basis. For example, groups might still engage in local fundraising activities, even though all fundraising is coordinated statewide to maximize all available resources. The civil legal aid delivery system must provide high quality services in sufficient quantity to meet the need and in a cost-effective manner. To provide such service, the system must ensure that legal aid staff has appropriate training and development, that the programs use technology, and that the programs have statewide support. Clients must be treated with respect and services provided in a manner that eliminates cultural barriers. Cultural competence and the elimination of language barriers are basic elements of a civil legal aid delivery system. Mr Echols acknowledged, however, that providing even those basic elements can be challenging when legal aid providers and stakeholders are confronted with cultures that are unusual by American standards. One such group is the Hmong immigrants from Vietnam. He said that in many states, these individuals are eligible for services, even from LSC-funded providers. However, because of cultural challenges, they often do not receive legal aid services. The ABA principles encourage the meaningful and respectful involvement of client communities in the civil legal aid delivery system planning process. Georgia is a state with a large, emerging immigrant population that must be engaged.

Fourth, the ABA's principles promote the involvement of the judiciary and court personnel in reforming rules, procedures and services to expand and facilitate access to justice. Court rules and procedures should not create barriers to access to justice, and rules and procedures should be changed to support *pro se* litigants.

Mr. Echols then discussed the self-assessment tool developed by the Task Force. While a comparison with other states' civil legal aid delivery systems is not that helpful, a self-assessment of an individual state's civil legal aid delivery system based on the ABA's ten principles is a useful exercise. The instrument created for assessment is in the materials provided by Mr. Echols and attached to the original of these minutes as Appendix B.

Many states are beginning to use the tool, and some states are adapting the tool for the state's own uses. In New Mexico, for example, instead of answering "yes" or "no" to a question, the response to a particular question in the self-assessment tool is "adequate" or "inadequate."

Introduction of Esther F. Lardent

Committee Chair, Marc Gary, introduced Esther F. Lardent, President and Chief Executive Officer of the Pro Bono Institute at Georgetown University Law Center.

Remarks of Esther F. Lardent

Ms. Lardent greeted the Committee and expressed her delight in coming to Atlanta for the meeting. Because she teaches at Georgetown University Law Center and her last class was that day, she had to return immediately after speaking to ensure that the students gave her good evaluations. [Laughter]. Ms. Lardent acknowledged many of the Committee members present, including Charlie Lester, with whom she worked on the first ABA legal needs study.

Ms. Lardent believes any assessment of needs should be client-focused and client-centered. Pro bono is not the answer to all legal needs but rather is a supplement to a robust, adequately-funded and staffed legal aid system. Pro bono programs have certain limitations; for example, the programs cannot handle emergencies well. There is an art to integrating pro bono into a good civil legal aid delivery system. Doing so also takes a great deal of resources.

There is a tremendous national upturn in pro bono, including in Georgia. Groups such as the Atlanta Volunteer Lawyers Foundation and the Georgia Bar have tried to bring corporate counsel into the pro bono fold. In addition, the fellowship project with the Atlanta Legal Aid Society has increased pro bono work by bringing in new resources and creating lifelong pro bono zealots. Pro bono works best if you first determine client needs and then match the client needs with the interests and the resources of volunteers. Pro bono also works well with programs for people with a limited English proficiency. The change in the poverty population is quite dramatic, and therefore, pro bono must address differences in culture and background.

Providing assistance for non-litigation, business matters, transactional matters, and legal research are also areas where pro bono is useful. Ms. Lardent said that she was a “recovering litigator” who did not really understand what transactional lawyers do. However, she knew that these lawyers helped to create jobs, build buildings, and start businesses. These are all important issues for poor and economically disadvantaged populations, and there are many people in law firms with transactional skills that could assist in these areas.

Clients think “bigger and smaller than one legal matter.” Small bites of pro bono time, when made available to people that need pro bono assistance, can make a tremendous difference. Ms. Lardent encouraged the Committee to think in terms of projects that go beyond the aggregate of the matter. As an example, she described a project with Archdiocese of Washington’s Immigration Legal Services (“ILS”). ILS had trouble answering the number of telephone calls that came to its switchboard, and, as a result, ILS’s lines were often busy. To solve the problem, ILS recruited law firms and attorneys to screen the telephone calls and to make appropriate referrals. The attorneys are trained to give brief counsel and advice in certain situations, and ILS provides support for the attorneys in the participating law firms. From 9 a.m. until 11:00 a.m., the telephones are switched to one person, and then from 11:00 a.m. until 1:00 p.m., the telephones are switched to another person. The transfer is invisible to the clients, but it has allowed ILS to handle three times as many clients as it previously handled because the staff now has more time to handle full cases.

Ms. Lardent also discussed a signature project of a Twin Cities law firm, in which the law firm staffs and runs a legal services clinic, with the assistance of legal aid attorneys. Minnesota provides a range of legal services, including representation of non-profits and a “know your rights” column written by one of the legal aid providers. That state provides a true model for developing partnerships with the community.

In Georgia, there is a not unusual but significant misallocation of lawyers and clients. There are many lawyers in one place, while clients are scattered throughout the state. Ms. Lardent suggested that with the use of technology, the Committee might overcome some of the challenges presented by geographical distances. In this way, the Committee could make lawyers available throughout the state despite the disparity in distance. There is interesting work going on in Chicago where lawyers use laptops and telephones to connect to clients in other places at no cost to the clients. In addition, in some states, urban firms have adopted a rural community and spend time with those communities assisting clients with legal needs. The Committee should think about the value of interdisciplinary pro bono work. In some states, there are partnerships forming with medical and legal professionals and with architects and legal professionals.

There are also advances in corporate pro bono. BellSouth leads the way in this area and Ms. Lardent indicated that Committee Chair and BellSouth General Counsel, Marc Gary, has shown wonderful leadership. The Pro Bono Institute has just launched a corporate pro bono challenge, in which 50 companies have signed on to a pro bono challenge and committed to have at least one-half of their legal staffs to engage in pro bono work each year. Atlanta companies, in addition to BellSouth, which have accepted the challenge include UPS and Coca-Cola.

Two other groups that are not the focus of the Pro Bono Institute, but which are perhaps more accessible to clients, are small firms and solo practitioners. The Committee should consider how to assist these “main street” lawyers with support, recognition, training, and determining cost-effective methods for them to engage in pro bono work. In addition to these attorneys, law students care deeply and passionately for equal justice and pro bono. Clinic programs or law school pro bono projects yields older pro bono junkies..

Committee member Cubbedge Snow asked Ms. Lardent how to best integrate the pro bono efforts of large firm city lawyers with the local efforts of small town lawyers or bar associations. Ms. Lardent responded that by having large firms coordinate with the local bar and the local judiciary, resources expand. As an example, a Portland, Oregon firm engages in this type of partnership. Any such program needs to be locally driven so that there is a sense of local ownership.

Ms. Lardent emphasized that there is not one single template or one single approach. An approach may work in one place, but you still have to tailor the approach to meet specific needs and populations.

Committee member Jack Long asked Ms. Lardent for information on mandatory pro bono. Ms. Lardent clarified that five states have mandatory pro bono reporting

requirements but no states have “mandatory pro bono.” She does not believe in mandatory pro bono because she sees it as “forced goodness” and she referred to an article that she had written on the subject [“The Case Against: Just Say No . . . To Mandatory Pro Bono,” from the Pro Bono Guide issue of *The American Lawyer*, 1996 (<http://www.probonoinst.org/pdfs/justsayno.pdf>)]. Most states with mandatory pro bono reporting requirements have new requirements, and the Committee should review them jurisdiction-by-jurisdiction. Massachusetts, Minnesota, and Washington, D.C. had strong pro bono cultures, but those states have decided not to adopt mandatory pro bono reporting requirements. If the Committee did consider mandatory pro bono reporting, it should ensure that it had a benefit for the state. The Committee should not view mandatory pro bono reporting as a “magic bullet” or solution. The issue for the Committee in Georgia is whether mandatory pro bono reporting would create real value or backlash.

Ms. Lardent also reported that the idea of giving CLE credits for pro bono is fairly new. It is not clear yet if this approach impacts pro bono. One state dropped the credits because they were not being used; the legal community needs some empirical research of this approach.

She also suggested that the Committee consider the “baby boomer” lawyers, which are a huge reservoir of people aged 55 or older. Some of these lawyers will practice law until they are “carried out.” Others want to play with their grandchildren. Some of these attorneys, however, will want to do pro bono work as an encore to their careers. These lawyers will bring useful strengths, including their stature and their contacts within the community.

Committee member Jane Fahey asked for more information about the lawyer-architect partnership that Ms. Lardent mentioned in her earlier remarks. Ms. Lardent clarified that the lawyer-architect partnership had not happened yet, but that it had generated some interest at the Kellogg Foundation. She said that some attorneys were working on a proposed project with the One Percent Solution [a group dedicated to pro bono work within the architecture profession]. In Boston, some pediatricians are advocating that the lack of legal services is a public health issue. Lawyers will come to the hospital to work with clients on issues such as housing. Therefore, if a child has asthma, a housing issue is resolved so that the child is not constantly brought back to the hospital for treatment related to inappropriate housing exacerbating the asthma condition. There are conflict issues present, but the professionals have worked through them. Ms. Lardent also told the Committee that there is a new project in Washington between psychologists and lawyers in which psychologists serve as parent counselors in custody disputes. There are many possibilities for partnerships.

Committee Vice Chair, Anne Lewis, asked for more information about the states that had looked at mandatory pro bono reporting. Ms. Lardent responded that a number of states had considered mandatory pro bono reporting. She said that three states – Minnesota, Massachusetts, and Washington, DC – that had considered the issue and decided against mandatory pro bono reporting. Bob Echols added that in Ohio, a Supreme Court task force had recently made a recommendation, advocating mandatory pro bono in that state. The ABA has a chart that showed information on each state’s pro

bono policies and that discussed the pros and cons of various policies [*See* <http://www.abanet.org/legalservices/probono/stateethicsrules.html>].

Chief Justice Sears asked, “What are the cons of mandatory pro bono reporting?” Ms. Lardent answered that in Massachusetts it was determined that the resources required to administer the system was one con. The question of whether the reporting was enough of a spur to make a difference also caused heated discussion in Massachusetts. In Washington, D.C., it was thought that mandatory pro bono reporting was not needed. Florida is the only state with mandatory pro bono reporting that has had it over a period of time, and it has increased pro bono. Florida has its judicial districts administer and monitor pro bono service. In Maryland, mandatory pro bono is in its second year, and the amount of pro bono hours has declined slightly in the second year. Ms. Lardent concluded that whether a state should adopt a mandatory pro bono requirement is a judgment call.

Mr. Echols asked about the role of the judiciary in promoting pro bono. Ms. Lardent responded that the judges’ role is “great.” Judges can participate in awards ceremonies and give pro bono counsel priority on their calendars and with scheduling. In addition, judges can help recruit pro bono volunteers and participate in CLE programs. She said that Judge Marvin Aspen [U.S. District Court for the Northern District of Illinois] in the 7th Circuit in Chicago administers a pro bono program for that circuit and is one example of how judges could become involved in pro bono work. Ms. Lardent concluded by stating that judicial participation was needed, encouraged, and welcomed.

Committee Chair, Marc Gary, asked if there were states with a statewide strategic plan, and if so which ones had the best plans? Ms. Lardent deferred to Bob Echols, who responded that New Mexico has a good statewide plan for pro bono. In addition, the Georgia Justice Builders has done a good job of formulating the first step of a pro bono plan for Georgia. He said that one of the strengths of that plan is that it looked beyond bar associations and to other non-LSC grantees for pro bono assistance. Mr. Echols emphasized that because of the restrictions on LSC-grantees, it is important to look at pro bono to assist with class action lawsuits and to help with systemic changes. Both Mr. Echols and Ms. Lardent stressed that both of the Georgia LSC-grantee programs [Atlanta Legal Aid Society and Georgia Legal Services Program] have done good work but reiterated that because of the federal restrictions, these programs could only undertake certain types of work.

Committee advisory member Phyllis Holmen asked if there have been any research or studies that have evaluated whether the use of technology has impacted attorney’s decisions to volunteer pro bono time. Ms. Lardent said that no research had been done on this issue as of yet. She knows people use technology to do “due diligence” and to learn more about available pro bono opportunities. Technology is a wonderful tool and it gives an attorney a comfort level to know that he or she can access manuals and forms. One big fear in pro bono is messing up, based on her observations and not empirical evidence.

Ms. Holmen said that the Georgia Legal Service Program has successfully engaged rural lawyers with technology. Attorneys like to participate in clinics, in part,

because it involves a limited and specific commitment. She said that Georgia Legal Service Program has also used technology to train attorneys via “WebEx,” and that Georgia Legal Service Program has had some success with this as well. [See www.webex.com]

Ms. Lardent agreed that distance learning is becoming more important. She also said that a new model to help “break the ice” in pro bono with in-house counsel is the “clinic in a box” concept. The clinic in a box is a three-hour commitment – 1½ hours of training and 1½ hours of client work. Initially, the program was community-based and developed for non-attorney advocates working on housing and domestic violence issues. Now the program recruits attorneys from law firms. The law firms will tweak the materials and have a law firm training based on the template. If clients need assistance beyond the brief consultation, then the firm has the option of taking the case or referring it on to another agency. The Pro Bono Institute has done 16 of the trainings to date, and the Pro Bono Institute was tracking whether any of the individuals who had participated in the trainings had gone on to do additional pro bono work. The program is being expanded to Philadelphia where it is being used to assist minority-based community businesses and to the San Francisco Bay area where it is being used to assist in HIV/AIDS legal cases and in guardianship cases. Ms. Lardent then concluded her remarks.

The Committee took a short break, after which Bob Echols made some follow-up comments to Ms. Lardent’s remarks to tell the Committee about some additional national innovations in pro bono. Mr. Echols first told the committee about “pro bono tapas,” such as clinics and advice lines. These types of pro bono activities are attractive to many attorneys because the attorneys know that they will not get embroiled in something unexpected. The attorneys can come in and out. In Maine, there is a “lawyer for the courtroom” program, in which an attorney assists an individual in court. Mr. Echols acknowledged that there might be professionalism concerns with this type of program in Georgia because some states have rules that prohibit limited scope representation. A number of states are developing specific rules on unbundling, so that the bar can specifically address questions about a lawyer’s continuing obligation to represent a client in certain cases. One lawyer in Maine earned approximately \$100,000 per year in income from her “limited scope” practice alone. Committee advisory member Phyllis Holmen said that there is a limited scope rule in Georgia, which lawyers do not invoke much and suggested that the rule might be something at which the judiciary could look more closely. [See, e.g. Ga. R. Prof. Conduct Rule 1.2; URSC Rule 4.3]

Mr. Echols also told the Committee that it might consider implementing an emeritus rule that allows a limited pro bono practice by retired attorneys. In addition, Mr. Echols suggested looking at changes to bar rules that would waive bar dues and continuing legal education requirements for emeritus attorneys. He also suggested considering implementing special rules for disasters.

Committee member Judge Wayne Purdom, asked if Georgia were to implement a limited scope practice rule, how would a judge know the difference between a case in which the rule was not in place and a case in which the rule was in place? How

would the court know that it did not have a case of client abandonment before it, if the limited scope practice was not part of a structured program?

Mr. Echols responded that many of the limited scope rules that have been implemented in other places are part of structured programs such as clinics and lawyer-for-the-day programs. If the case is not part of a structured program, then the courts and bar have developed notice forms and scope of representation and notice of withdrawal forms that are in common use in those jurisdictions.

Mr. Echols then addressed a distinct issue that Ms. Lardent raised during her remarks – judicial involvement in pro bono. He stated that the role of the judiciary in pro bono is important – especially in rural areas. In rural areas, the creation of judicial districts and regional structures may promote pro bono. In Maryland, for example, regional committees were created as part of Maryland’s mandatory reporting rule. [See, e.g., <http://www.courts.state.md.us/probono/rules-summary.html>]. Florida also has a structure that other states have adopted. [See, e.g., http://www.floridalegal.org/ProBono/probono_questions.htm].

Mr. Echols also reported that New Mexico and Colorado were moving ahead with partial pro bono programs in rural areas with few attorneys. These states are creating specific projects and clinics, in part to increase visibility for legal services in these areas. It is important for the bar and the judiciary to educate the public about the need for pro bono and the various pro bono options that are available.

Committee member Judge Bill Duffey remarked on the ten principles. He remarked that one of the principles included the goal that no one is excluded from the justice system because of status. He has seen the impact on federal courts and agencies of the increase in non-English speaking defendants in the criminal system. In recent years, approximately 1,300 defendants had appeared in his court, and of those 600 defendants were illegal immigrants who did not speak English. The court has had to hire a full-time Spanish-speaking translator. Judge Duffey added that there are a significant number of illegal immigrants in Atlanta and in pockets in Dalton, Gainesville, and south Georgia. There is an increase in the need for services and an increase in the cost to serve populations, including illegal immigrants. Judge Duffey stated that the Committee would need to prioritize services between legal and illegal population’s needs.

Mr. Echols said that in his opinion, Congress had already established that priority by saying that LSC-funded organizations cannot represent illegal immigrants. He continued, however, that it is not simply illegal immigrants to which he was referring because there were categories of legal immigrants that LSC-funded grantees could not serve.

Judge Duffey stated that he has observed an increase in the number of persons being deported due to the commissions of crimes and asked to what extent data was available regarding the “hard costs” needed to fulfill the aspirational goal of providing legal services to all. Mr. Echols acknowledged that he was not aware of any data on the costs of providing legal services to all, but he stated that he would look into it.

Introduction of Joan E. Fairbanks

Vice Chair, Anne W. Lewis, introduced the Committee's third speaker, Joan E. Fairbanks, Justice Programs Manager, Washington State Bar Association and Access to Justice Board.

Remarks of Joan E. Fairbanks

Ms. Fairbanks greeted the Committee and stated that she was flattered to be invited. Washington has a mature and well-established Access to Justice Board, and she came to speak to the Committee as an informal consultant. She hoped to present information of interest to the Committee and encouraged the Committee to ask questions. Ms. Fairbanks felt that she had been traveling on this "access to justice" road for a long time. Georgia has been a leader in the access to justice area, and Ms. Fairbanks remembered when she and Committee advisory member Michael Monahan were part of a small group of people who were on the access to justice journey. Ms. Fairbanks said that the Committee had taken on an enormous challenge. Ms. Fairbanks also thanked Bob Echols for his work and said that access to justice movements were growing around the country and increasing in visibility because of his efforts.

Washington is one state and model. Over the years, the model has worked for her state, but she encouraged the Committee to also look at and consider models used by other states. The Washington State Access to Justice Board was established in 1984 by order of the Supreme Court and after a recommendation by the Washington State Bar to the Supreme Court. The movement began as a result of the efforts of "movers and shakers" in the Washington State legal aid community.

The Washington State Access to Justice Board is nominated by the Washington State Bar Association Board of Governors and appointed by the Supreme Court. The access to justice board has nine members from categories as follows: one Board of Governors member, one IOLTA representative, one legal aid representative, one lay person, one private attorney, one public attorney, one judge, and one at-large member. The Washington State Access to Justice Board is very generously supported by the state bar and includes five staff members. The Supreme Court contributes \$100,000 per year to the program and 2% of the state bar budget, which is generated from bar dues, provides funding for the program. In addition, the IOLTA program provides additional staffing for the program.

Initially, the Washington State Access to Justice Board was authorized for a two-year period, and then reauthorized for a five year period. Now, the Washington State Access to Justice Board is a permanent board in Washington State and is part of the judicial branch of government.

Ms. Fairbanks followed up on Mr. Echols' presentation on the ABA principles. She is grateful to the ABA for establishing the principles and that the ABA had incorporated into the principles many of the ideals that are embodied in Washington State's access

to justice principles. The ABA principles are good guidelines, and Ms. Fairbanks encouraged the Committee to adopt the principles.

In Washington, the principles are called “Hallmarks,” and they are the “essence” of Washington’s system. In Washington, the delivery system must be client-centered: “No one gets written out of the justice system!” The Hallmarks drive everything in Washington. In Georgia, the Committee must determine how the ABA principles fit with the values of the Committee and how should the Committee use the principles.

The Washington State Access to Justice Board has done many things over the past twelve years; the most critical thing that the Board has done, however, is to establish the Board’s vision and values. The first thing the Board did was to establish the Hallmarks, which is the embodiment of the Board’s vision and values. Whenever the Board plans, “we pull out the Hallmarks and plan around them.” This is true of everything from technology plans to funding plans. During her presentation, Ms. Fairbanks referred to a power point slide that illustrated the Washington vision and values concept, which is reproduced below, as Exhibit 1.

Equal justice is at the core of everything that the Washington Access to Justice Board does, as demonstrated by the illustration. First, the Board determined its vision and values. The second step in the process that the Washington Access to Justice Board uses is “planning,” and the Board places a major emphasis on planning. The third step in the process is funding. The Washington Access to Justice Board does not just look at funding to raise the level of resources, but to serve – especially those who cannot be served through LSC-funded programs. In Washington, lobbyists have worked for these groups, and as a result Washington has a robust IOLTA program. The final step is accountability. Everything done in the state must support the concept of “equal justice.” Accountability helps to ensure that everyone stays on the same road. In short, Ms. Fairbanks stated, we start with a vision, then plan around the vision, make sure that we can fund the vision, and then determine if the vision is working together to support the Board’s overall visions and values. Ms. Fairbanks then opened the floor to questions.

Committee member Jack Long noted that Ms. Fairbanks had provided to the Committee information about Washington State Plan, which included information about the state’s “volunteer attorney capacity.” He also noted that Washington gives continuing legal education credit to attorneys who volunteer to do pro bono work, and he asked if providing that credit had increased the state’s volunteer attorney capacity.

Ms. Fairbanks responded that the Board was now trying to answer that question. The Board previously had no way to track whether continuing legal education credit was an incentive to take a pro bono case, so now the Board is asking the legal aid programs to try to capture this information.

Mr. Long noted that the Washington Access to Justice Board has a goal of having 25% of the bar take pro bono cases, and that, at the moment, only 16% of the bar accepts pro bono cases. He then asked two questions: (1) how did Washington get to

16% pro bono attorney participation rate and (2) how did Washington intend to get to the higher percentage for attorney participation in pro bono?

Ms. Fairbanks said that she did not think that Washington had done a good job with pro bono and that was one of the reasons that pro bono was addressed in the current state plan. She continued that Washington had some good rules in place, including an emeritus rule that waives the continuing legal education requirement for retired and inactive attorneys who perform pro bono work. The Washington rule is modeled after the California rule. In addition, Washington has a new Rule of Professional Conduct 6.1, which is modeled after the ABA rule, and so Washington now has a voluntary reporting requirement for pro bono hours. This serves as an annual reminder from the bar of an attorney's professional responsibility. Ms. Fairbanks said that the Washington State Supreme Court is also getting involved in the promotion of pro bono work. The Supreme Court will honor attorneys who do well beyond the recommended 30 hours of pro bono work per year. In Washington, the Access to Justice Board is trying to get pro bono more integrated with the civil legal aid delivery system. If the Board can increase pro bono participation by 50%, the Board would reach the goal of having 25% of the bar doing pro bono work.

Committee Chair Marc Gary asked why Washington State had both principles and hallmarks. Ms. Fairbanks responded that the Hallmarks are delivery-system focused: how to plan for, fund, and provide services. The principles and goals are meant to define what Washington means by "access to justice." In Washington, the Board believes that access to justice is a fundamental legal right: "We believe someone losing a kid or home is pretty fundamental." The Washington Access to Justice Board attempts to raise consciousness and awareness that these are important legal issues to low-income people.

Committee member State Representative Edward Lindsey suggested that one impediment to pro bono for solo and small practitioners was the lack of malpractice insurance to cover pro bono cases. He said that many regular business malpractice policies might not cover this type of work and wondered if Washington offered some level of indemnification for attorneys engaging in pro bono work, or alternatively if Washington offered any type of insurance, set up through a statewide program. If such a program is in place, does it encourage pro bono work by attorneys?

Ms. Fairbanks responded that if an attorney is doing pro bono work through a qualified legal services provider, then those providers typically have insurance through the National Legal Aid & Defender Association. Ninety percent of the state's pro bono volunteers are automatically covered by this insurance. In Washington, emeritus attorneys must work for a qualified legal service organization. There are a couple of agencies in Washington that do not have this insurance, and the state does not currently offer an alternative for these. Rep. Lindsey said that providing insurance could be an incentive for these attorneys.

Committee member Rev. Fahey said that Georgia is the only state in which a habeas corpus case is a separate civil proceeding. She asked how habeas corpus cases are funded in Washington State. Ms. Fairbanks said that habeas proceedings are not considered part of the civil legal justice system in Washington, and she was not

certain how these cases were funded. Committee Chair Marc Gary asked if habeas corpus representation was considered part of the civil legal justice system, generally, in other jurisdictions. Bob Echols answered that in other jurisdictions, it is considered criminal.

Georgia is unique in that habeas corpus proceedings are considered civil matters. Based on the Court's precedents on this issue and based on the fact that Georgia is the only state in the country in which the state does not fund habeas corpus representation, the Committee will need to take a look at the issue. [See, e.g., Gibson v. Turpin, 513 S.E.2d 186, 270 Ga. 855 (Ga. 1999)].

Mr. Echols then began his presentation on resource development and public awareness. During his presentation, Mr. Echols referred to a power point slide that illustrated the sources of funding for legal services, which is reproduced below, as Exhibit 2. The largest source of federal funding for legal services, 30%, comes from LSC. Public funding represents 20% of all funding for legal services, and it includes federal funds that are routed through the state and federal grants from agencies such as Housing and Urban Development, the Internal Revenue Services, the Justice Department, and Food Stamps. State funding represents 17% of the pie, and IOLTA represents another 11% of the pie. Private foundations contribute to seven percent of the funding for legal services; lawyers, in the form of voluntary bar dues provide six percent of the funding. The United Way contributes two percent of the funding. "Other sources" of funding, which include cy pres awards and pro hac vice fees, represent the last seven percent of the funding.

Mr. Echols then gave the Committee a brief history of funding from the 1980s through 2005. In terms of nominal dollars, LSC funding has remained relatively flat. Other federal funding has increased. State and federal funding has greatly increased. Finally, other sources of funding have increased. Nevertheless, when the dollars are adjusted for inflation, the picture changes. When adjusted for inflation, LSC funding for legal services has decreased. State and other federal funding has still increased, even when adjusted for inflation. IOLTA funding has remained static, when adjusted for inflation. Legal services funding has moved from a federal-based system to a state-based system. The result is that there is a huge disparity from state to state in civil legal funding. Minnesota, for example, spends four times as much money per low income person for legal services as Georgia.

Mr. Echols then presented a funding comparison of Georgia to the national average showing Georgia is significantly below average in state funding and in other areas, such as public funding. Georgia does well with many federal grants awarded to ALAS and GLSP, even though on the charts the numbers look low. The reason is that we have so many poor people. Therefore, even though Georgia gets a good amount of grant dollars, the amount of grant dollars compared to the national average comes out substantially lower when divided by the poverty population. Mr. Echols also noted that IOLTA is significantly below the national average because, in Georgia, not all of the IOLTA money goes to civil legal aid.

Lawyers in Georgia contribute to legal services in Georgia at the national average.

Mr. Echols said he did not believe that the foundation figure was meaningful because programs in California and New York received a far larger share of foundation money than programs in other states because large numbers of foundations were located in those states. If Georgia wanted to increase the amount of spending per poor person, Georgia would need to increase the amount of its state funding. If Georgia doubles its state funding, it would be at the national average in terms of spending per poor person. If Georgia wishes to rise above the national average, Georgia would need to more than double its state funding.

Mr. Echols then shared with the Committee some developments in IOLTA programs, called “comparability rules.” Seven states require lawyers to deposit their trust funds in banks that treat IOLTA accounts in the same manner as other deposit accounts. Florida adopted the policy about three years ago and saw a 300% increase in IOLTA revenue, he said. Mr. Echols acknowledged that part of the 300% increase was because of an increase in interest rates, but part of the increase was also because of the implementation of the comparability rules. Maine plans to move ahead in this area soon. ABA IOLTA experts caution that comparability rules are not the answer in all states because in some states IOLTA rates are negotiated to ensure that IOLTA receives good rates at all times.

Committee member Michael Tyler asked if, in Georgia, IOLTA money were not allocated to criminal indigent defense then would not Georgia’s IOLTA funding be at the national average. Committee member Cubbedge Snow recalled that this arrangement was a political matter. Former Speaker of the Georgia House of Representatives Tom Murphy could have killed mandatory IOLTA, but he agreed not to do so if the bar agreed to allow 50% of IOLTA revenue to support indigent defense. Mr. Snow said that criminal indigent defense ought to be the state’s responsibility, and now that Mr. Murphy was no longer a member of the House, perhaps the state could revisit this issue; however, another Committee member, Rep. Lindsey, cautioned against this strategy.

Committee member Judge Duffey asked if state funding was the real difference in Georgia being above or below the national average in legal services spending. Mr. Echols responded, “Yes,,” and noted that one of the states above the national average, Connecticut, was an exception because that state had many IOLTA dollars. But state funding, which includes direct appropriations for legal services, filing fees, and surcharges is usually how additional funds for legal services are generated.

Mr. Echols then shared with the Committee a recent success story from Mississippi. Two years ago, he and one of his colleagues, Meredith McBurney, presented information about state funding to Mississippi. At that time, everyone assumed that state funding for legal services was a very long-term goal. This past year, however, Mississippi Governor Haley Barbour signed legislation for state funding for legal services, despite having previously made a campaign pledge not to increase taxes. The Governor did not consider the fee increases to be inconsistent with his pledge not to increase taxes and was convinced that the additional funds for legal services were necessary.

Mr. Long noted that only two years ago, the bar had successfully recommended to

the legislature funding for criminal indigent defense with fee increases. In light of that history, he asked Mr. Echols what he would propose to increase funding for legal services in Georgia. Mr. Echols responded he believed that one way the Committee could gain support for additional state funding for civil legal aid was to educate people about the benefits that the state might receive from increased legal services funding. For example, if with legal services dollars, the state could increase the amount of federal benefits that Georgians receive, the Committee might educate people about the multiplier effect that those additional federal dollars have on Georgia's economy. Washington, Nebraska, Maine, and Minnesota show that it is a wise investment of public funds and saves courts money. In short, investments in legal services are cost effective. Mr. Echols also suggested that at some point the Committee invite Meredith McBurney to speak to the Committee about possibilities for a legislative campaign.

Committee member Todd Carroll commented that no one believed that Linda Klein would get \$2 million in state funding for civil legal aid for domestic violence victims. Mr. Echols cautioned the Committee to try to avoid restrictions on state funding, if possible, especially if the Committee hoped to address civil legal aid problems in a systemic, overall way. Most states have been successful in obtaining unrestricted funding, he said, although some states have state funding that have restrictions on it similar to the LSC restrictions.

Mr. Snow asked who gets the \$2 million in state funding for domestic violence victims. Ms. Holmen responded that ALAS and GLSP get most, but she said shelters and other agencies also receive some. She said the Georgia Supreme Court distributes the money on a competitive basis.

Mr. Echols next told the Committee about the public's awareness of legal services and legal services funding. A national research survey of 1,200 adults was prepared in [2000] for the National Legal Aid & Defender Association and the Center for Law & Social Policy, regarding people's attitudes towards legal services. With respect to legal services, there is good news and bad news. The good news is that there is broad support for legal help for low-income persons, even when it is a government-funded program. When asked if "legal help for civil matters should be provided to low-income people," 89% of the people surveyed answered "yes," and 55% answered "strongly yes." When asked if "a government-funded program should provide legal help for civil matters to low-income people," 82% of the people surveyed answered "yes," and 42% answered "strongly yes." The bad news, however, is only 13% of those surveyed could identify a government-funded program that provided such legal services.

One of the committee members asked if these numbers were valid for Georgia. Ms. Holmen responded that the State Bar of Georgia conducted a similar survey in Georgia, and 85% of those surveyed supported access to justice among all people regardless of gender, race, income status, or political affiliation.

Judge Duffey asked whether if people knew that government-funded programs already existed to provide access to legal services for low-income people, those surveyed would support increased funding for legal services. Ms. Holmen responded

that most people believed that if a low-income person needed help, he or she would get that help. Mr. Echols added 33% of those surveyed thought that “low-income people have a very difficult time getting legal help in civil matters.” Ms. Holmen noted the converse was that 66% of those surveyed did not think that low-income people had a difficult time getting legal help when they needed it. The challenge, Mr. Echols noted, was the invisibility of the problem.

Committee advisory member Mike Monahan said that he observed one of the focus groups during the national survey, and respondents from all walks of life gave a resounding “yes” in response to the provision of legal services, even on hot button issues such as abortion.

Mr. Long asked if any public relations campaign in any state had increased public funding. Mr. Echols responded that no state had made a major effort to educate the general public. Most educational campaigns are focused on the bar, the judiciary, the legislature, and other opinion makers first. Clients that most touch the public’s sympathy are children, domestic violence victims, veterans, the elderly, and the disabled.

Mr. Gary asked about the least sympathetic clients. Mr. Echols responded that those are most likely immigrants and prisoners. He continued that the values that underlay the justice system are good talking points – fairness, equality, and [society’s] responsibility to help others. The most persuasive arguments for increased legal services funding are explaining how legal services make a difference, how legal services helps people gain access to justice and how legal services help others. The most important part of a public awareness campaign is for the Committee to put a face on legal needs.

Committee advisory member Marty Ellin asked where IOLTA comparability rules would be enacted, if the Committee wanted to consider enacting them. Mr. Echols responded that it depended on how the IOLTA rules were currently implemented in Georgia. Several committee members responded that the current IOLTA rules are court rules. Mr. Echols emphasized that the comparability rules regulate attorneys and not banks.

Chief Justice Sears commented that the bar should explore the issue and present its findings to the Court. Mr. Snow said that the bar might already have good relations with the banks.

Next, Ms. Fairbanks discussed Washington’s experience with its needs assessment study and with resource development. The Washington Supreme Court established a task force on fundraising, and the task force recommended a comprehensive civil legal needs study. For years, the legal aid community had gone to the legislature and advised that there was a need for additional legal services, but the legal aid community had never been able to quantify the need. The purpose of the needs study was to come up with a figure for the legislature to consider.

The Washington Access to Justice Board has a Task Force on Civil Equal Justice Funding that was established by the Washington Supreme Court. The Task Force's work has been divided into three parts. First, the Task Force commissioned a civil legal needs study. Ms. Fairbanks brought a copy of the report for the Committee to review. [See also <http://www.wsba.org/atj/>] The one-page quantification analysis of figures for state legislators to consider along with the civil legal needs study report are included with Ms. Fairbanks's materials. Second, the Task Force decided how funds for civil legal aid should be administered. Third, the Task Force recommended a statutory change to move the administration of state funding for civil legal aid into the judicial branch, and legislation was passed creating the Office of Civil Legal Aid as part of the judiciary.

Ms. Fairbanks then explained the elements of the civil legal needs study. The Washington study was similar to the Oregon study, which was completed earlier. The first part of the study consisted of a field assessment of 1,500 in-depth in-person interviews, which included representative numbers from each of 15 demographic cluster groups. At first, Washington was going to use the exact methodology that Oregon used; however, Washington later decided to focus on unmet legal needs. Therefore, none of the 1,500 persons interviewed were legal aid clients. Washington wanted to know who wasn't trying to access the justice system and why. The Washington Access to Justice Board therefore identified 15 demographic groups about which it wanted additional information, and 100 persons in each of these 15 demographic groups were interviewed. Portland State University Department of Sociology assisted with this phase of the study. The cost for this part of the study was approximately \$95,000.

The second part of the legal needs study was a "Random Digit Dialing" ("RDD") telephone survey. Ms. Fairbanks said that initially Washington had not intended to include this type of survey, but because of some political pressure to have Washington State University participate in the study, the Access to Justice Board agreed to include this type of survey and to have Washington State conduct it. Part of the concern about this type of survey was that many of the poor in rural parts of Washington do not have telephones. This phase of the study cost approximately \$40,000. Washington chose not to conduct a stakeholder survey such as the survey conducted by Oregon involving mailing a survey to 50 people in each of several categories. In addition to the money that the Washington Access to Justice Board spent on the actual study, the Board also elected to hire a communications firm to write the final report at a cost of \$40,000.

Ms. Fairbanks estimated that the entire out-of-pocket cash cost of the study was \$175,000, although the Board incurred additional in-kind costs, mainly staff time, to conduct the study.

Ms. Fairbanks also told the Committee how Washington raised funds for the legal needs study; its sources of funding were as follows:

- Washington Supreme Court: \$50,000
- Gender and Justice Commission: \$10,000
- Legal Services Corporation: \$10,000
- State Office of Community Development: \$10,000

- State Aging and Adult Services Administration: \$20,000
- Columbia Legal Services: \$30,000
- Legal Foundation of WA: \$30,000
- Washington State Bar: \$15,000

Next, Ms. Fairbanks told the Committee how the Board could have done the study for less. First, the Board could have eliminated the RDD, which was done for political reasons. This survey captured many people who had incomes above 125% of the federal poverty level, but the findings of the RDD mirrored the findings from the field survey. In other words, middle-income and low-income people seem to experience some of the same problems. Washington could have reduced the cost of the study by limiting the number of questions asked on the survey. The questionnaire that Washington used asked many questions not only about legal needs but also about (1) satisfaction with the legal system, (2) what a person did if he or she did not get a lawyer and (3) barriers to access to justice. In addition, the questionnaire asked about technology and the “technological divide” because the Washington Access to Justice Board has principles that govern access to justice issues that are technological. Some of the technical questions asked on the survey included questions such as (1) do you use technology, (2) how do you use technology, and (3) is your use of technology avoidable. The Board asked these questions because it decided that as long as it was conducting a legal needs study, the Board might as well ask many questions and gather this information.

Third, Ms. Fairbanks suggested that the Board could have limited the cost of the study by using the results of studies conducted by other state with similar demographics. Ms. Fairbanks suggested that the Committee might want to “piggyback” on what other states are doing.

If Washington were to do the survey again, it would spend more on the field survey because it was the most valuable piece of the study. The field survey is the place where the Board obtained the client stories, and the client stories were what resonated with the people in Washington. The Board has gotten much feedback that the study is statistically significant and well done. The Washington legal needs study is important to funders and considered to be a professional piece of work that resonates with people. Furthermore, Ms. Fairbanks said in the Board’s opinion, the study was worth the money, and the Board believes that it has gotten a significant amount of money from the state legislature as a result of the study. If the Committee decides to conduct a study, Ms. Fairbanks suggested that the Committee not skimp on consultants or paid staff. She also suggested that the Committee pay for a professional final product that is well-laid out with statistics.

In 2005, Washington received \$1.9 million in new state money for civil legal aid. In 2006, Washington received approximately \$334,000 in new state money for civil legal aid. The Board is very hopeful that in 2007, Washington will receive \$5.0 million in new state money for civil legal aid.

In the past, the Board would go to the legislature and say “we think this is the need,” and the Board was turned away. The legal needs study was given to every single member of the state legislature, and it helps the Board in formulating policy.

For example, if the Board has a discussion about permitting non-attorneys to do certain types of work, the members can consult the study to see the need for that type of action. In addition, the Board uses the study as support for key initiatives. One of the single largest needs, according to the study, was assistance with discrimination issues. Discrimination was pervasive everywhere. In Washington, a human rights group works on discrimination issues and is using the study for a budget increase because legal aid does not do this type of work.

The Washington Board just completed a new State Plan, the first State Plan that the Board has developed having this amount of data to assist in developing the plan. The new State Plan is data driven because the Board had both the legal needs study and census data with which to work. In the new State Plan, the Board will focus on aspects of the delivery system affecting rural delivery. The plan attempts to quantify present and potential pro bono. In addition, the Board plans to strengthen state support for rural programs and to establish a greater presence in rural areas. The Board has adopted a new plan to ensure that legal aid services are more available in rural areas of the state. The state has been divided into 18 regional service areas of not less than 12,000 low-income people. The Board has defined a range of legal aid services that must be available in all regions of the state. Each region must have a minimum level of legal aid presence, defined as the equivalent of 3 full-time attorneys.

In addition, in its efforts to strengthen pro bono, the Board used “interactive GIS” mapping to map the location of all attorneys in the state and all programs in the state. The map that was generated was also used as part of the analysis for the state plan. Next, the Board decided to quantify pro bono hours. The Board established a minimum delivery expectation for stand-alone pro bono programs (1 FTE / 1500 hours worth of client service). If a program could not provide that minimum level of pro bono service, then the Board would not support that pro bono program and would instead structurally integrate the pro bono function into the regional delivery infrastructure. Therefore, in the future in Washington, pro bono will have a much more structured relationship to other legal aid services in the state.

To fund the new State Plan, the Office of Civil Legal Aid has requested \$3.67 million for the 2007-2009 fiscal years to achieve “minimum presence” in 8 regions and to upgrade legal aid presence in 3 additional regions. The Board has also requested an additional \$1.6 million for the 2007-2009 fiscal years for an intake system for the largest county in Washington State, King County. The Board is very hopeful that the legislature will pass these funding proposals.

Ms. Fairbanks told the Committee that all legal groups, both criminal and civil, have begun to work together to educate Washington state legislators about “Justice in Jeopardy.” The courts, the public defenders, and the civil legal justice community have come together as a coalition to request legislative funding. The legal community has informed the Washington state legislature that the justice system is underfunded and that each of these components of the justice system is integral and interrelated. There being no questions, Ms. Fairbanks concluded her presentation.

Committee Chair, Marc Gary, held a brief business meeting, at which actions were taken as follows.

Roll Call

Karlise Grier circulated the roll for signature. Committee members who signed the roll and who were present for the meeting were as follows: Hon. Leah Ward Sears; Marc Gary; Anne W. Lewis; Paul Todd Carroll III; Richard H. Deane, Jr.; Hon. William S. Duffey, Jr.; Rev. Jane Fahey; Prof. Timothy W. Floyd; Victor M. Lai; Charles T. Lester, Jr.; John B. Long; Edward H. Lindsey, Jr.; Hon. Wayne M. Purdom; Rita A. Sheffey; Cubbedge Snow, Jr.; Michael W. Tyler; and W. Terence Walsh. Advisory Council Members who signed the roll and who were present for the meeting were as follows: Martin L. Ellin; Steven Gottlieb; Sharon N. Hill; Phyllis Holmen; Michael L. Monahan.

The signed roll is attached to the original minutes as Appendix A.

Approval of Minutes

The Committee approved with one correction the minutes of the October 31, 2006, meeting. Committee member, Rita Sheffey, submitted the correction and clarified that the Atlanta Bar Association, not the Atlanta Volunteer Lawyer's Foundation, sponsors the "March Madness" continuing legal education program.

[The Committee adjourned for lunch at approximately 1:00 p.m. and reconvened at approximately 1:45 p.m. During lunch, the Committee members met in small groups with the guest speakers.]

After lunch, Ms. Fairbanks began her presentation regarding delivery coordination. As part of her presentation, she discussed the Washington Access to Justice Board's book, The Noblest Common Denominator – A Road Map for Building An Equal Justice Community. The Open Society Institute offered to give Washington funding to write down that state's experience on how to build an equal justice community. The Road Map book represents the steps that Washington used to build its equal justice community. She emphasized that the book represents only one state's approach to building an equal justice community.

Ms. Fairbanks first defined an equal justice community as "a group of individuals and organizations united through common, expressed vision and a shared set of values, who are bound together by a sense of fidelity to the promise of justice and equality, and who are willing to put personal, professional and organizational allegiances aside in pursuit of a common justice ideal." To build an equal justice community, people must set aside personal, professional, and organizational allegiances in the pursuit of a common justice ideal. In Washington, equal justice is client-focused. The vision in Washington is to build a legal system that ensures full and complete access for everyone. Georgia will need to define its own vision. One of the tools that Washington used to determine its vision was to review its past and imagine its future. Each year, Washington has an equal justice conference. At the

first conference, huge pieces of papers were taped to the wall and every person or entity that contributed to the building of Washington equal justice community was recognized on the papers. The timeline began with the Magna Carta. Each year at the conference, every stakeholder in the equal justice community is invited to add to the timeline important events that have occurred during the previous year. The review of past events, via the timeline, has been a successful community- building tool in Washington.

Ms. Fairbanks then spoke about the values of the Washington equal justice community, commenting: “Your values are your compass.” In Washington, the equal justice community has developed a code of conduct, which includes rules such as “No turf,” which has become a mantra in the Washington equal justice community. Other phrases that Washington developed to demonstrate its code of conduct include “It’s the clients, stupid!”; “No one cares who gets the credit”; “Not the usual suspects”; and “Change is good.” There has been a great deal of change in Washington, and they believe that this change is good.

Leadership was Ms. Fairbanks’ next topic. She advised the Committee that in its capacity as a statewide access to justice entity, the members are key leaders at this point. Leadership must be nurtured and nourished, and in Washington, the board is trying now to pass on the culture of the current equal justice community to the next generation. The Board works hard to remain non-partisan in everything that it does. In Washington, the Board invites to the table the people who object to their work, and “converts them.” In Washington, the equal justice community is viewed as a moving network, much like a spider’s web: a process and a “web of inclusion” with different parts. If something bad happens in one part, like defunding, then the network is strong enough to survive the setback. She continued that the Washington equal justice community has also developed a “brand” and agreed upon a way to educate funders about what the Board does, who its is, and why it is doing what it is doing. It is important to involve others, who are not part of the justice system, in the work that the Committee will do.

Ms. Fairbanks also talked with the Committee about “humor and entertainment.” A skit is presented each year at the access to justice conference in Washington State. She recalled that one year, Deborah Hankinson visited Washington State from Texas and participated in a skit at the conference. “Dare to be corny” is another Washington mantra. Everyone in the equal justice community works hard on important work, and therefore, it is important to bring some levity into the process.

Next, Ms. Fairbanks discussed the importance of institutionalizing the Committee’s work and building organizational support for the equal justice community. In Washington, this structure consists of a statewide coordinating board and a legal aid network. The planning process that Washington adopted is controversial among national legal aid providers and is a touchy subject. Ms. Fairbanks therefore did not speak in detail about Washington’s planning process. Instead, she encouraged the Committee to think about Georgia and the Committee’s vision for this state. She cautioned that the more successful the Committee becomes, then the Committee “will see more people cropping up that come after you.” In Washington, the nemesis is the agricultural industry. There are many migrant farm workers in Washington

State, and the legal aid community tries to represent their interests. The group representing the agricultural industries' interests – the Washington Farm Bureau – would be “right on our tail” when the Washington Board went to the legislature. Three years ago, the access to justice community decided that it had had enough, and so the legal aid organization that was raising ire, Columbia Legal Services, forfeited all of its state funding and instead agreed to receive only IOLTA funds. Thereafter, the Washington Farm Bureau asked the Washington State Supreme Court to restrict IOLTA. The Supreme Court refused. The Washington Farm Bureau then asked the Supreme Court to restrict groups that received IOLTA funds from participating in legislative lobbying, and again the Supreme Court said no.

Three of the Supreme Court justices were challenged in the last election, and all three of the justices were re-elected. However, if the justices had been defeated, Ms. Fairbanks believes that Washington may have lost its IOLTA program. In short, she said, the more successful you become, the more ire you will raise and the more you will have to fight. In Washington, they call their equal justice effort a movement. When people feel part of a community, they begin to take large leaps of faith together. Bonds of teamwork and trust develop. Some of the pro bono people did not feel a part of the Washington equal justice community, so the Board has worked on leadership training in this area and brought in a facilitator to assist with collaborative efforts. It has taken three years to develop the new pro bono campaign that Washington will use, but now Washington has a statewide coordinated private bar campaign.

Ms. Fairbanks also spoke about the unorthodox partnerships that have developed in Washington. She mentioned that two of the growers in the state became concerned about the domestic violence and funded a project for fellows from legal aid to come in and talk about domestic violence in their communities. A bond formed between the legal aid attorneys and the growers in those communities, which survives today, and when the legal aid community has requested legislative funding, the growers have supported those requests to legislators.

An equal justice community requires care and feeding: “You have to walk the walk, not just talk the talk.” In Washington, this has taken the form of programs giving one another funding, when one program loses some of its funding. She stated that this is a fairly dramatic example, but in Washington, equal justice challenges are viewed as kind of a “barn raising.” Every program comes to the aid of the other programs when one is in need. One of the legal aid programs has taken on the burden of statewide technology for the state, another example of a program with the most resources stepping up and doing what is necessary to assist the equal justice community as a whole.

Remaining mission-driven is important. Accountability is always tested by your values, and it is carried through all phases of the work, including state planning, resource development, and the annual access to justice conferences. Every project and initiative is accountable to the visions and value of the community. Ms. Fairbanks then explained why Washington goes through all of these processes. She said when the equal justice movement in Washington first began, there were many “nay sayers” who said that all you would have in the end is a coordinating

committee. Instead, Washington's Access to Justice Board has a list of accomplishments. The operational gains include economical, effective, and targeted use of resources; increased resources; and ensuring that projects are not left incomplete (i.e., "balls don't get dropped"). The operational gains have resulted in delivery system gains, including communication initiatives to raise awareness; uniform data collection to improve system capacity; coordinated strategies to increase pro bono participation; and coordinated resource development. In Washington, the legal aid community does not waste or duplicate resources. In addition, Washington has seen a dramatic increase in resources. The legal aid community has been able to raise more money with the private bar, statewide pro bono has increased, and case management has improved. Someone is always assigned to a task to ensure that it is completed. The most recent example of this is a project to ensure that agencies are not duplicating web site content. It is an energy conservation method.

Washington is not perfect, and Washington's equal justice work continues. Currently, Washington has a great deal of demographic data, but not as much data about the kinds of cases that the programs are handling and closing, and so there is a new collaborative effort to work on these issues. Washington does not believe that it is doing a good job on pro bono issues, so it is also working on this. In addition, work is being done on a one stop for clients so that there is on statewide intake system for all clients.

Jane Fahey asked Ms. Fairbanks more about the accountability piece, such as the kind of reporting required of legal aid providers. Ms. Fairbanks responded that the legal aid providers did not make any reports to the Board, only to funders, and the reporting was whatever the funders required for grant purposes. The coordinating body in Washington State is developing a questionnaire to test the performance of the system as a whole.

Introduction of Deborah Hankinson

Committee member, Professor Timothy W. Floyd, introduced Ms. Deborah Hankinson. Ms. Hankinson is a Board Member of both the Texas Access to Justice Commission and the Texas Equal Access to Justice Foundation. In addition, she is the Chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

Remarks of Deborah Hankinson

Ms. Hankinson greeted the Committee and began her remarks by informing the Committee that when Texas first began this work, she went to Washington, and she indicated that some people from Washington came to Texas' first meeting to give their Commission the roadmap. Now, Texas is five years into the process. Ms. Hankinson advised that her talk would focus on how values translate into the fabric of the work that the Committee will do.

Success is wedded to raising the profile of the issue. One of the most remarkable Texas statistics demonstrated how overwhelming the support was for legal aid for

indigent persons. Public education and community networks are key, because otherwise, “you will never raise the boat.” She noted: “The first project in a strategic plan is public education.” As an illustration, after Hurricanes Katrina and Rita, the Texas commission wanted to see if it should do an endowment campaign. Texas took in citizens from Louisiana and Southeast Texas after the hurricane, and the commission began to think that an endowment would help in a “rainy day.” The commission hired Ketchum consulting firm, and the firm conducted 52 confidential interviews around the state. The consulting firm recommended that the commission develop an endowment, but ultimately, the commission recommended against the endowment for other reasons.

What the commission learned from Ketchum’s research, however, was that the commission and its objectives were virtually unknown outside of the legal community. The results surprised the Texas commission because it had been “patting itself on the back” for a good job and the findings were like a “knock upside the head.” Therefore, it is important to develop a message and to explain “what is legal aid.” The Committee will need to explain that the work that it does impacts basic human needs such as safety, family, housing, and medical care.

The Texas commission has “stubbed its toes” one or two times, and at one time the members thought that the commission was derailed; however, a committee has to remind itself about the clients and put the problems behind itself. In addition, as a committee raises new resources, it must show results and show how the resources are used to help the clients: How many families are served, what are the number of clients served, how many lawyers have been hired, how does the difference in resource allocation impact the time of judges and lawyers? The lack of legal assistance for indigent persons is a societal problem, not a legal problem – but lawyers must provide leadership. The education process must begin with the bar and the judiciary. Next, the Committee should educate other branches of government, including the executive branch and the legislative branch. Finally, the committee has to educate the public at large, and when it educates the public, it builds new partnerships. In Texas, the legal aid community has partnered with the crime victim community, and as a result, Texas has been able to use \$2.5 million per year in crime victim money to give legal aid assistance to crime victims. When the money was first allocated, it was allocated for one bi-annual cycle. During that time, the legal aid community built relationships with the crime victim community, and demonstrated how the legal aid community could effectively use the resources to benefit crime victims. Therefore, the next time the court requested the money, the court had the support of crime victims, one group to which the legislature does not say no is crime victims.

Once the Committee determines the message, the Committee will need to refine the message for audiences at three levels, so the Committee can determine how best to deliver the message. Strategic planning is an important part of the process. Texas has a committee that is very task- and project-oriented about getting the word out. The committee is staffed by the state bar staff. In addition, in conjunction with the IOLTA Board, the commission has hired a communications director so when something happens, the commission has the ability to get the word out. Professional help is important, and the Texas commission has received donated time from

professional public relations people and the media. “Ask.” she stated. “All they can do is say ‘no.’” In addition, the Texas commission always recognizes the people “who do for us.”

Texas has used professional help to refine the message. Refine the message first, she suggested, but you do not need to start from scratch. Use key words and phrases to articulate your message. The Committee should develop a packet of materials that discusses the need, the providers, and the resources available, to hand out to people. The materials should also explain who is the population that is served, explain how services are delivered, and explain what effort the bar is making towards pro bono work. This information should be reduced into attractive written materials. In addition, information should be made available electronically. These tools are a starting point.

Texas started with a strategic plan. One of the first things the Texas Commission did was to recommend that the Texas Supreme Court hold a hearing. This hearing also helped to focus the attention of the Texas Supreme Court on the issue of access to justice. Other states have conducted regional hearings to determine what is going on in a particular community and to determine what the needs are and what efforts need to be undertaken. Texas recently had a second hearing before the court because there had been a significant change in the membership of the court since the first hearing, and the commission wanted to focus the court’s attention on the issue again. The second round of hearings received a significant amount of press coverage because during the five years of the commissions’ existence, the commission had developed relationships with the press. The Texas Supreme Court got good publicity as a result of the hearings.

Texas also produces a publication call the *Legal Front*. Texas Lawyers Care publishes *Legal Front* four times per year, and it discusses everything that is happening in the access to justice community. It therefore includes information about the law schools, the loan forgiveness program, the ABA Delegates, and pro bono awards. *Legal Front* is sent to every Texas legislator and every member of Congress in Texas.

All of the law schools are part of the commission. Most recently, the commission took a group of law students to the Rio Grande Valley.

The Texas commission also never lets an issue of the *Texas Bar Journal* go out without a piece on access to justice. The *Texas Bar Journal* contains a piece on an Access to Justice Champion lawyer, and the article discusses what the lawyer does.

In Texas, the commission has also reached out to the media in Houston, Dallas, Austin, and San Antonio. The commission members have made contact with the news and editorial persons at each of the papers. In addition, they have gone to radio. Is difficult to break in with the radio stations, but when Katrina hit, they thought about the commission, and the radio people called the commission. She said that the commission has gotten educational pieces out of these relationships and is starting to see the returns. Now the commission has someone to whom it can send

press releases when something happens like law students going to the Rio Grande Valley or when a new Temporary Protective Order packet is developed.

The Georgia Committee has seen the tape which Bill Moyers narrated. The Texas commission is in the process of doing another tape; Dan Rather will narrate pro bono. Ms. Hankinson also said that a third tape is being done for corporate legal departments. The General Counsel for Exxon Mobile Corporation, “Charlie” [Charles W. Matthews, Jr.], has a corporate seat on the Texas Access to Justice Commission. With his help, the Texas commission obtained a letter signed by 16 general counsels that encouraged the legislature not to cut legal aid. The Texas commission will use the pro bono video in the same manner in which the client video is used. It will be played at every state bar meeting, and at continuing legal education courses as the video qualifies for 15 minutes of ethics credit. A video is a good tool once the message is refined.

The Texas commission also has an “ABA Day,” in which the commission calls on members of the Texas legislature in both houses. When a commission member calls, the member will leave a packet of material with everything that has happened in the access to justice community within the past year. The packet is tailored to the legislature. If anything happens in Washington, D.C., then the commission already has relationships in Congress.

At this time, the commission is also focusing more information on Texas judges and educating them about what is going on and on what the judges can do. Therefore, the commission is placing articles in publications to judges and going to judicial conferences. Now, at every legislative session, the Chief Justice always discusses access to justice issues.

Texas has a web site – www.texaslawhelp.org. The commission has received a grant to train librarians about the web site. As a result, use of the web site has increased by 178 percent. In August 2006, approximately 21,000 used the web site.

The Texas commission has successfully obtained public service announcements free of charge in 10 media outlets. The commission also makes presentations to local bar associations.

The chair of the Texas commission is Jim Sales, who is a former marine. He was so upset when the Ketchum report came out that he got a \$100,000 grant designated to try and reach more Texas lawyers and tell them more specifically about the commission’s work, so that lawyers know what the commission is, what the commission’s message is, and what the commission does.

By doing projects and having some success, the momentum builds and the Committee will have a movement like Washington’s. If the Committee wants to get more money, it is important that people understand the problem. If the Committee wants lawyers to do more pro bono work, it is important that people understand the impact that the pro bono work will have.

The Texas commission is required to file reports with the court every six months. Ms. Hankinson brought a copy of the commission's report, which included attachments to show examples of the things that the commission has done. In addition, the commission regularly asks the Supreme Court to do thank you letters. Everyone finds a way to contribute and to offer something.

Next, Ms. Hankinson spoke briefly about two of Texas' current initiatives. First, she advised that she was not an expert on Georgia's comparability rules but suggested that this was something that Georgia might want to consider. However, she warned the Committee to make sure that there is no "kickback." The top 80 banks pay 0.65% on IOLTA accounts and 3.31 % through 4.42 % on non-IOLTA accounts. The comparability rules only govern lawyer's accounts of \$100,000 or more and generally state that if a lawyer has a trust account with \$100,000 or more in funds, then the funds must be deposited in a bank that pays comparable rates on IOLTA accounts. It is estimated that in Texas, this change would result in \$21 million per year in new money, but the proposed rule was getting a little backlash in Texas.

Second, the commission is trying to expand the rural delivery system, and this issue has its own separate committee. "Get the fabric going, and see what happens," she suggested. However, the Committee should "put public education at the top of the list for the strategic plan."

At the conclusion of her remarks, Ms. Hankinson opened the floor for questions. Committee Vice Chair Anne Lewis noted that Ms. Hankinson stated that the Texas commission's work had almost been derailed and asked the reason. Ms. Hankinson responded that shortly after the commission was formed, there was a change in state bar leadership. The commission was designed to be a stand-alone entity so that it would not be affected by changes in bar leadership and by how high a priority access to justice was on any particular bar leader's list. But at one point, the state bar president and the president-elect wanted to pull the commission under the state bar and derail the process, and the commission feared that its work would be derailed. Nevertheless, the Supreme Court justice who replaced Ms. Hankinson on the supreme court called a meeting to discuss the issue, and it became evident that the commission was institutionalized enough to overcome bumps in the road. Since that time, the commission has been further strengthened so that it will not be derailed based on who is the president of the state bar.

Ms. Hankinson then explained another situation, which led to a compromise mandatory assessment on the bar's members. There were a couple of programs that people thought were not moving fast enough. Indigent defense was a big issue. In Texas, the commission suggested an "opt out" on the dues statement to provide funding for legal aid. After Texas adopted the "opt out," with the inclusion of a letter of support from the Supreme Court, Texas went from generating \$35,000 for legal aid to \$1.2 million for legal aid. When the State Bar came up for its sunset provision, the legislature stated that if the bar did not support a mandatory dues assessment of \$65 for all Texas lawyers to be divided among all of the programs, then the bar bill would die. After this situation occurred, many relationships had to be repaired, but the bar plans to support a renewal of the mandatory \$65.00 in the

future. Ms. Hankinson said that you survive these things and you get stronger. You learn how to handle them.

Ms. Lewis also asked how the Texas commission was funded. Ms. Hankinson responded that the commission was ordered into existence in 2001. The funding in Texas came from an add-on fee to cases, from IOLTA, and from a voluntary contribution in the amount of \$35 from lawyers. Texas raises approximately \$500,000 through pro hac vice fees, which are administered by the bar admissions office. The commission is allocated \$1.8 million from the \$65 mandatory fee, and the state receives \$2.5 million in crime victim funds. Texas IOLTA has now been converted into an agency that handles all of the state funding, and then the funding is distributed through grants to all of the programs. There is no unrestricted money in Texas.

Ms. Lewis wanted to clarify that all of the contributions in Texas go to IOLTA, which manages the money. Ms. Hankinson said that IOLTA is an agency of the Supreme Court. When the commission was awarded the crime victim money, the Attorney General's office contracted with IOLTA to manage the money. The Supreme Court manages everything else.

Ms. Hankinson said that when you think of resource development, it is "nice to hit the jackpot," but in six years, this is the first jackpot money that Texas has seen. She said that if you get \$500,000 here and \$250,000 there, it adds up.

Mr. Long wanted to clarify that the change in the comparability rule would raise \$2 million in Texas. Ms. Hankinson responded affirmatively. Texas has the second largest poverty population in the country. Ken Smith conducted an inexpensive study for Texas to help the commission to make a determination about whether to implement the comparability rule, as the commission could not just make a decision based on population. The IOLTA group in Georgia knows where the money is and how much each bank will pay. Texas prepared a set of talking points and organized the commission to determine who would speak with which legislators. In addition, she said that Texas' pro hac vice fee of \$250 raised \$500,000 in Texas. In Mississippi, the fee raised approximately \$375,000. For a contribution from the pro hac vice fees, Texas went through the Board of Law Examiners, which administers the pro hac vice fees. The court recommended the use of the fees. In Texas, an attorney must file a motion for pro hac vice admission and pay the fee if the motion is granted.

Mr. Long asked if there was a list of initiatives that the states had used to raise money. Bob Echols responded that there was a list in the Committee member's materials.

Ms. Hankinson continued that when the commission reaches out to different groups of people, then the commission makes those people part of the commission's work.

Mr. Snow commented that the Committee should check with the Georgia IOLTA people to see what is going on. Ms. Hankinson commented that some of the national

banks pay comparable rates in some states but not in others. Mr. Gary suggested that the resource development committee look at the IOLTA issues.

Mr. Tyler asked if the legislative committee of the Texas commission does the heavy lifting. Ms. Hankinson said that for “ABA Day,” one of the committees of the Texas commission came up with a unified agenda for getting the word out, and then the commission discussed the right person to call specific people. Ms. Hankinson said that she had a good relationship with the chair of the judiciary committee, so she called that person. Someone else called the governor’s office. She suggested that the Committee get as many people as possible involved because everyone knows someone.

Professor Floyd asked if a needs assessment was part of a public awareness campaign. Ms. Hankinson said that Texas decided not to do a needs assessment. Texas started with the stories of people, and the commission felt that it had enough information about the need – everyone knew it was bad. No one questioned the need, so in Texas, the commission decided to start doing things. Texas also uses The Justice Gap report, which has worked well for Texas.

Ms. Hankinson also made one further note about funding in Texas and advised the Committee that Texas continues to have a voluntary fundraising campaign because some lawyers are exempt from the mandatory assessment. Texas had raised an additional \$500,000 as a result of these efforts.

Committee member Todd Carroll asked about the number of lawyers in Texas. Professor Floyd responded that he believed it was approximately 80,000.

Ms. Hankinson then told a story about a civil rights lawyer who had written to the court in 1985 to inquire about an access to justice issue. Ms. Hankinson said that the lawyer wrote every six months because he never got a response, and the court sent all of his letters to the state bar. In 2000, the lawyer sued the court, and to make amends, the court asked the bar to begin working on the access to justice issues. The bar had previously been working on the issues. When the Supreme Court held the first public hearings, the court heard eight hours of testimony, much of the testimony from clients, and it was “shell shocking.” Washington has shown by example that you can tackle the problem.

One of the committee members commented on the remarkable amount of time that Ms. Hankinson devotes to access to justice issues, and she said that she was not involved in these issues during the first 20 years of her career and joked that she was “trying to make up for it.” Mr. Hankinson then concluded her remarks.

Materials that Mr. Echols, Ms. Fairbanks, and Ms. Hankinson presented to the Committee are attached to the original minutes as Appendix B.

The Washington State Access to Justice Board's book, "The Noblest Common Denominator – A Road Map for Building An Equal Justice Community" is attached to the original minutes as Appendix C.

Mr. Gary thanked the speakers. He urged the subcommittees to begin working as soon as possible. He advised the Committee that the next meeting of the full Committee was scheduled for January 26, 2007. The Committee will receive the agenda ahead of time, and he anticipated that one item on the agenda would be reports from the subcommittees, so that the subcommittees could give the Committee an idea of the work that they were undertaking.

Adjournment

There being no further business, the meeting was adjourned at approximately 3:25 p.m.

Respectfully submitted,

Karlise Y. Grier, Executive Director



The National Legal Services Funding Pie

