

2018 Hawai'i Access to Justice Conference
"Fighting for Access to Justice for All"
Friday, June 29, 2018

Workshop summary:¹

"Collaborations and Innovation for Equal Justice"

Presenters: Gary Slovin, Ashford & Wriston (facilitator); Chief Justice Mark E. Recktenwald, Hawai'i Supreme Court; Judge Douglas McNish (ret.), mediator; Rachael Wong, founder, One Shared Future

Facilitator Gary Slovin opened the morning workshop by introducing the panelists and sharing that immigration is one of the biggest issues for access to justice today. Recent United States Supreme Court cases on gerrymandering, the travel ban, Ohio voting rights, and union fees were cited as other challenges to justice. Slovin reminded the audience that access to justice helps people who lack power. He noted that while we can be proud of what Hawai'i has done to increase access to justice thus far, we need to ask ourselves whether we are collaborating at the level that we need to be. The goal of the panel was to identify new ways of collaborating and concrete steps to move forward.

Hawai'i Supreme Court Chief Justice Mark E. Recktenwald presented on where he sees access to justice going in the future. He noted that the formation of Hawaii's Access to Justice Commission was very important and allowed for the opening of self-help centers in every circuit. Over 21,000 people have been helped at centers across the state since the first center opened on Kaua'i in 2011. Through the efforts of the Access to Justice Commission and collaborations with many partners throughout the state, other initiatives have been made possible as well, such as the Appellate Pro Bono Project, self-help interactive legal forms, and the ability to provide legal information online.

Chief Justice Recktenwald shared where he sees Hawaii's access to justice efforts going from here. First, we are partnering with allies and folks in the community -- such as librarians, people in the health care industries, and community navigators -- to share information about available legal resources. Second, we have been seeking ways to use technology to connect those with legal issues to resources that can help. The Microsoft Portal Project has great potential. Furthermore, Pew Charitable Trust is interested in portals and online dispute resolution as ways to provide options online. Last, access to justice initiatives are developing opportunities to connect with others, discovering new funding sources, such as foundations, and expanding current efforts. This requires us to look at what we are doing and see how we can engage with others

interested in addressing similar issues, such as homelessness, health care, and education.

Retired Family Court Judge Doug McNish shared the history of funding for civil legal services providers. One policy question noted is where on the spectrum between a right and a privilege do civil legal services for the poor fall. The largest source of funding for legal aid programs is the Legal Services Corporation (“LSC”). In 1964, Congress passed The Economic Opportunity Act, which established the Office of Economic Opportunity (“OEO”) to administer all the anti-poverty programs funded by the federal government. Specified funds were earmarked for legal service programs, but OEO funded legal service programs were required to include representation from the poor on their governing boards. In 1966, 130 legal aid programs had been funded, and this number grew to 260 in 1968.

By 1971, there was widespread agreement that the OEO’s funds for indigent legal services should be moved out of the Executive Department to an independent non-profit corporation. In 1974, Congress created LSC, which is an independent entity governed by a bipartisan board. The board appointed by President Carter focused its efforts on increasing the LSC budget and was successful in funding two full time legal services lawyers for every 10,000 people below the poverty line. However, when President Ronald Reagan took office in 1981, his administration cut spending to OEO by 25% in his first year in office. The next year, new restrictions were added to LSC funded programs, which included (1) no lobbying or trying to influence administrative rulemaking; (2) limited representation of certain categories of immigrant; (3) procedural limits on representing plaintiffs in class action litigation; and (4) a requirement that state bar associations make appointments to local program boards, thus ending the requirement of representation from the poor. During the Clinton administration, Congress imposed new restrictions which provided that LSPs could not use funds received from other private or public donors for services prohibited by LSC.

Over the years there have been various attempts on one side to eliminate funding for LSC completely and on the other to eliminate the restrictions on legal service providers. Neither has been successful. Creativity, resilience, and perseverance are words that describe those who have continued to support legal services and access to justice for all. There have been some good things that came from challenges to LSC, such as bar associations becoming allies to legal service providers, new non-LSC funded service providers emerging to fill gaps in service, and the creation of IOLTA and ILAF as new funding sources. The glue that makes this work is collaboration. Here in Hawai‘i, we are fortunate to have the Hawai‘i Consortium of Legal Service Providers and the Access to Justice Commission. We are also fortunate to have support from HSBA, the University of Hawaii’s William S. Richardson School of Law, and Chief Justice Recktenwald.

Rachael Wong, former director of the Department of Human Services (“DHS”), shared about the challenges facing the department and encouraged innovation by engaging partners, creating a shared framework, and deepening and expanding opportunities for collaboration. “One Shared Future” (“OSF”) is a new initiative that seeks to create space for collaboration and support a transition from compliance to collaboration in state government. OSF’s Change Leadership Approach was created to provide strength-based opportunities for public sector professionals to expand and grow through learning, personal development, collaboration, and face-to-face exchange with the private sector. The year-long pilot started with three cohorts from DHS, the Department of Health, and [state] human resource leaders from six departments. Each cohort met in 8 full-day sessions.

Through participation in OSF, cohorts increased their internal and external awareness, leveraged the collective wisdom of the members of their cohort, and used their work as their curriculum to envision creative and innovative ways to overcome challenges. One example of a solution that resulted from a cohort’s participation in OSF is the Wiki Wiki Hire program, which streamlines the hiring process for state departments and improves the speed with which vacant positions are filled. The OSF framework has been called career-changing and is open to working with different branches of government.

The session ended with question and answer, and a video of an inspirational poem from Naomi Shihab Nye entitled, “Gate A-4.”

¹ A draft was prepared by Daylin Rose Heather and edited by the presenters.