

2019 Hawai'i Access to Justice Conference
"Expanding Access to Civil Justice"
June 7, 2019

Workshop Summary¹

"Should We Fear the Future: Evolving Nature of the Practice of Law"

Panel Presenters:

Dean Aviam Soifer, William S. Richardson School of Law, facilitator; **Chief Justice Mark Recktenwald**, Hawai'i Supreme Court; **Linda Hamilton Krieger**, Professor of Law, William S. Richardson School of Law; **Deane Neubauer**, Associate Director of the Asia Pacific Higher Education Research Partnership at the East-West Center; **Liam Skilling**, Director of the Evening Part-Time Program and Academic Success, William S. Richardson School of Law

After brief introductions by Dean Soifer, the first presenter was Chief Justice Recktenwald. Chief Justice Recktenwald began by acknowledging that we are facing new challenges in access to justice, and there is a need to create new opportunities for access, as a result. He mentioned three changes that have contributed to the challenges: (1) Rapidly increasing numbers of unrepresented litigants in civil court cases; (2) People not realizing that they have a legal issue, and (3) Changing expectations of potential litigants.

Chief Justice Recktenwald spoke about a civil justice system that is in need of repair, and our need to be able to adjust to the changing technology, so that the practice of law and our courts remain relevant. In relation to the issue of increasing numbers of unrepresented litigants, Chief Justice Recktenwald quoted the following statistics: In ninety-seven percent of summary possession cases (eviction) in Hawaii, defendants are unrepresented. In ninety-four percent of divorce cases in Hawaii, one party is unrepresented, and in sixty-two percent of divorce cases, both parties are unrepresented. Increasing numbers of unrepresented litigants show that there are not enough resources to meet the need, even though we have more practitioners of law than ever before. With regard to the changing expectations of people with regard to legal issues, Chief Justice Recktenwald spoke on the nationwide decrease in civil jury trials. In addition, some businesses have dispute resolution clauses written into their service agreements, which limits people's ability to seek resolution in the courts and presents other issues of transparency. Online businesses often offer online dispute resolution, which provides a fast and efficient way to resolve disputes. Other ways in which artificial intelligence and online companies are changing the future of lawyering include online legal services, like Legalzoom.

Professor Linda Hamilton Krieger spoke on the law's direct bearing on the structure of our institutions. She said we must focus on the future, the evolution

of our society and our systems, and the changing practice of the law. Her position was that although the workshop is about fearing the future of the practice of law, there is plenty to fear right now, in the present. She said that in order for us to “unlock a less dystopic future,” we have to think about the practice of law in broader terms. She spoke on a general view of the law as a top-down system, where laws come from a higher system, the legislature, and then judges and lawyers, and then the proletariat and the poor. She asked us to think of the law as a bottom-up system, where innovations in the law, and the practice of law are motivated and initiated by the people, for the people.

Professor Krieger provided hypothetical examples in which people invoke the laws against discrimination, and then company policies and institutional policies are used to shut down the conversation, and discourage individuals from seeking justice. She also mentioned relative information in these cases being more available to the institutions rather than the individual parties. These tactics, now ingrained in our systems and institutions, mobilize the law to stop potential litigants. Professor Krieger also pointed out that the State of Hawaii was a leader in the creation of civil rights laws, but that we are falling behind. She spoke to a rising culture of individual adjudication in Hawaii, as opposed to class action adjudication, the latter having more impact in effecting long-term change. She stated that the State of Hawaii has not yet written state law analogous to the federal Title VI laws, and that Hawaii’s commission on Title VI cases is located in Seattle. There are no Hawaii laws prohibiting discrimination in education, and no way to adjudicate discrimination in education locally. Finally, Professor Krieger emphasized the need for strong community-based organizers to represent these types of issues, in order to make civil rights issues a priority, and give individuals more power and just outcomes through the law.

Liam Skilling began his presentation by mentioning recent news stories about the riot in Charlottesville and the mass shooting in Parkland. He confessed his fear for the future of law stems less from those headlines themselves than the ways lawmakers’ indifference to those headlines influences the younger generations, including his own teenaged daughters. With increasing access to technology, now many misguided and dangerous ideas run unchecked in the public square. The laws are inadequate to address the rising tides of hate and the literal rising tides of climate change. The younger generations are being exposed to violence and global destruction, causing them legitimate fear for their futures. It is encouraging to see the thoughtful activism of the Parkland student activists, but disheartening when their efforts to effect change are met with indifference and even criticism by the older, powerful, policy makers and politicians. Although we can see other countries respond quickly to tragedy, for example, New Zealand lawmakers banned semi-automatic weapons, nationwide, within days of a mass shooting in a Christchurch mosque, we watch important proposals for changes to our own gun laws remain forever bogged down in a quagmire of powerful lobbyists, political postures, and ideological zealotry. People see our politicians prioritizing corporations as people with rights, but

nature, organisms and their habitats have no rights and protections. As a result, the moral authority of the law is being questioned, because the law is being used to stall necessary change. People, and especially young people, are losing faith in the law and our government. The lack of response by lawmakers is fueling the flames of fear, creating anxious desperation among the youths. As the pursuit of justice is increasingly calling justice seekers to commit acts outside of the law, we need to educate people how to make change using the law.

Deane Neubauer presented his concern that the world is changing faster than higher education. We are still operating under a 130-year-old German education model and have not adapted higher education to incorporate current technological tools to change how we teach, or what we teach. We stand on the edge of a technological revolution, also known as, the 4th industrial revolution, 4IR, or industrial revolution 4.0, that will fundamentally alter the way we live, work, and relate to one another. Technology will alter our work, and the necessity of human legal professionals, as A.I. and new algorithms begin to do the work. A.I. is being used in some jurisdictions to make bail and probation decisions. Slowly technology will begin to model an engagement in a professional legal framework that does the work more efficiently, and effectively. Professor Neubauer pointed out that we are still educating people to pursue lifelong careers, when our economy continues to change, and a “gig economy” emerges. In a “gig economy,” graduates of today are expected to have 14-18 jobs in their lifetime. Furthermore, he questioned the possibility for our institutions to survive politically and economically if they are not more in-step with modern technological advancements. It is predicted that fifty percent of our institutions of higher education may close over the next decade.

In their final statements, Professor Krieger said, “There is no such thing as justice without the subjective experience of a human being, it is a felt experience, and the perception of justice and the belief in justice influence our willingness to obey the law.” Chief Justice Recktenwald noted the importance of doing what is right under the law because the public’s trust in the court’s ability to be fair must not be undercut. Liam Skilling encouraged us to be inclusive of the youth, and openly engage with and educate upcoming generations. Deane Neubauer suggested we create work groups and study groups to help us understand the impact of the 4IR on the legal profession.

¹ A draft was prepared by Laura Cushman, attorney in the Kona office of the Legal Aid Society of Hawai‘i, and edited by the presenters