

Just Innovation

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Good morning. Thank you for the kind introduction. And deepest thanks for the privilege of being with you today for Hawaii's 2017 Access to Justice Conference. I was delighted to be asked and am honored to be among this outstanding equal justice community. I so admire all that you are and all that you do. Special thanks to Dean Avi Soifer, one of the very best deans in legal education; and also to Professor Calvin Pang, Ms. Nalani Fujimori-Kaina, and Ms. Carol Muranaka who all diligently assisted me with learning about recent developments in Hawaii related to Access to Justice. Thank you for helping me understand some of the innovations you have implemented and others in process to advance access to justice and better serve the legal needs of all of the people of Hawaii. Your spirit of innovation is impressive and just what is needed as I shall say more about shortly.

Before I get there, let me state what I think is clear to this group, but brings us into common understanding. Our world is in poor legal health. We do not hear as much about this as we do our physical health ... imagine for a moment if all the energy going into juice machines, the latest power bar, the newest no-carb diet, the new salty crunchy chip that's not really a chip because it's made out of kale rather than a potato, the fancy exercise machine that can get you fit in just under seven minutes per day, you get the idea. What if all that energy were put into legal health? Or if an equal amount of federal and foundation funding looking for the next cancer or Alzheimer's intervention were put into addressing civil legal needs? Now do not get me wrong, these physical health matters are surely critical for the health of our world and its people (who among us has not been touched by disease?). But people die from poverty just as they do from smoking (and they are of course related), just as many women die from relationship violence just as they do from breast cancer. My point is just that we need to focus on legal health, too.

And when we think of our legal health, we see concerns. We see them at a very fundamental level in what has been a steady erosion of focus upon and respect for the rule of law as the bedrock of human flourishing. The rule of law is often misunderstood or taken for granted. I have come to believe that perhaps it is too much like air, easy to not appreciate until you feel its absence. Only then, gasping, do we see how vital it is for life. Now, to be sure, there are hopeful signs recently – over the past few months lawyers have been featured on the front pages of many leading newspapers, in positive ways. Even some “so-called judges” have been celebrated. There were also signs held aloft and shouts heard broadly to “let the lawyers in” at the airports as we dealt with a quick shift in immigration policy that caught many people and families in very difficult circumstances. Moreover, for the first time in a very long time, we see a slight uptick in the number of young people applying to law school rather than more of a downward slope.

Despite those positive signs, as grateful for them as I am, we see additional concerns in both our criminal and civil justice systems. The former is still struggling with under funding and race equity; the civil side is battling similar challenges as we see way too many people go without lawyers as ideas of civil Gideon continue to meet resistance. Many studies show numbers like 70-80% of people do not have legal counsel in civil court proceedings. We are in a very strange world where at the very same temporal moment we hear that we have too many lawyers and too many who are under or unemployed while we witness the access to justice gap grow ever wider. So, yes, our legal health is suffering.

But these problems are known to all of you who have worked and do work in the trenches day in and day out, seeing these issues large and small, time and time again. So, let me not dwell on our challenges, which are steep, but to say again, thank you. As Mari Matsuda long ago noted, we can measure our commitment to issues by asking “where is your body?” Because it is easy to say “I care” and then not “do.” But you all do. Thank you; thank you for doing what you do. You are stretching your individual and collective efforts, your resources, your energy, your minds, and yes, your bodies, across chasms that we must find ways to bridge systemically. But we must do more. We can no longer see legal aid as band aid. No, we need deep and lasting systemic change. We need justice.

So, I know I do not need to convince you that our legal health is important and insufficient. Let us focus then on how, together, we might all do more and better to improve the health of our legal system and make the promise of equal justice real. That saying was not equal justice for some, it was equal justice for ALL. My strong belief is that in order to reach that promise we need to nurture what is a promising and growing spirit of innovation in our legal community. Now, that word, innovation, can be overused and scary. What organization’s website today does not claim that it is innovative? It’s a word that’s hard to be against. It can also be a conversation ender rather than a starter. Because often when we in law talk about innovation, we go to one of two extremes and sit in our corners. Some of us sit in our corners still using only pencils and yellow pads and list all of the barriers to why change won’t happen, why it hasn’t happened, and what will stop it from happening. Others of us sit in our corners playing on our Ipads and Surfaces and dreaming of robots that will replace all humans, including lawyer humans. Neither of those approaches is going to be constructive in advancing the cause of equal justice.

There is another way. We live in a time full of promise for how innovation, including changes in technology, can enhance the delivery of legal services to under-represented persons and causes. But “just innovation,” that is, innovation for its own sake, is not only unhelpful, it is also dangerous. As Hawaii’s equal justice community well understands, we can ill afford to divert time and other resources to game-like apps and tweets while social inequality grows ever steeper. Neither can we afford to reject innovation and stay stuck in place – this is not working, people! Rather, we must nurture a spirit of “*just* innovation,” that is, a spirit of innovation whose first principle is to advance justice and human dignity.

A spirit of just innovation in law will recognize several core principles, and I want to highlight three today:

First, technology is one tool for innovation, not the only tool or the end itself. But it is a very helpful tool. We don't need gadgets, we need justice. But some gadgets might help us advance justice. Visual law, kiosks, way finders, some apps. And just as we need a spirit of innovation (and even embrace of failure) with innovation of commercial products, we need that same spirit and tolerance when it comes to products and processes that have potential to advance justice. As my friends in Seattle's innovation ecosystem are fond of reminding me: if you are not failing some of the time you are failing all of the time. We must not only tolerate risk taking, we must encourage it.

How do we nurture this spirit of innovation? The same way we do in the commercial sphere – we set up incentives and opportunity. Many law schools and other organizations are today hosting what are known as hackathons, weekend-long gatherings of lawyers, developers, marketers, entrepreneurs, VC funders and students to seek a new solution to a legal problem. Some are focused on certain topics, for instance, consumer debt; others are more wide open to encourage creativity on any topic that will enhance access to justice. I have been impressed and encouraged by the energy and inventiveness of these sessions; and just delighted to see how the interest in solving “wicked” justice problems is washing over new groups of smart and creative people.

Going further, many schools now have “labs” or “centers” devoted to this new thinking and design work. Two of my favorites are Stanford's Legal Design Lab and Harvard's Access to Justice Lab. If you had told me in the 90s when I founded one of our nation's first Access to Justice Institutes at Seattle University School of Law that that Harvard would have an ATJ Lab, I would have thought you were teasing me. These efforts are happening at all ranks and kinds of law schools. This is progress.

At UW Law, we are fortunate to sit in the middle of a very lively innovation ecosystem and through an Entrepreneurship Law Clinic are working in the space, collaborating with what is known as CoMotion (a much better name for what used to be called our “tech transfer” office). [Most research oriented universities have these offices that have traditionally been focused upon moving inventions in medicine, science and engineering to market]. The same spirit can apply to legal innovations, too.

Recently, I had an excited and creative student say to me: “Dean, you know the app that allows you to call upon a dog walker at any time and get just the help you need? What if we could do that for a lawyer?” I asked whether she thought lawyering might be a little more complex than dog walking, or ride sharing, or restaurant reservations or dating. “Well, maybe dog walking, but not dating,” she offered. “We just need to make the sorting properties of the app more nuanced, so, for instance one can find an employment lawyer, employee side, 5-10 years' experience, located in a certain city and perhaps even with a certain industry experience, who is taking new clients, and who can talk later that day.” I don't think it will be long before we can do that.

There are many promising opportunities of innovation involving technology. Usually when we think of technology are minds go to apps or gadgets. But there is more. I'll mention two here that do not get as much air as others. One of them is about method, the method of coding. When

one writes code, it requires that you break a complex process down into very small steps that are then put into computer language so the computer can perform them in the right sequence. Sound familiar? That's what lawyers often do, take complex matters and help guide people through them, step by step. Coding method is not unlike legal method in this sense. The technology mind set can help us explain ourselves and make law more understandable and user-friendly. This approach is really helping to break law down so that users with differing needs can access help where there are not and perhaps never will be enough lawyers to be by their sides. There are many examples of this kind of approach to innovation in law on the websites of the centers I mentioned earlier (and others).

A second promising potential of technology is that it can help us harness data, and data can help us learn a great deal. It can reveal gaps in justice and it can reveal what works and what does not. We often mistakenly call it "big data" because there is a lot of it, and our technology can now allow us to make sense of it. But I think the real potential of data is to be small, granular, pointed, revealing. We need to know what the problems are, and whether the solutions we are trying are really helping. Data has helped us understand legal problems in new ways, particularly of note here is work that has exposed racial disparity in our justice system. But data can also help us be more accountable with our solutions, too. There is a concept in medicine called pathogenic, which means that the remedy might actually cause more harm than good. A recent study of a law school clinic suggested an iatrogenic effect in that an initial study suggested that clients offered clinic assistance were doing less well than those not offered the assistance. This kind of data can help us not only understand problems but also tailor solutions that work.

A second principle of just innovation is that it should be human centered. What that means is that we learn from the people we are trying to innovate for as we are immersed in their lives and needs; we generate ideas based on those needs, and we implement and evaluate to serve those needs. In other words we don't just dream up stuff in a lab; we understand lived experience as our lab and get into it, up to our elbows, seeking solutions that respond to those lived experiences. This is where the equal justice community can be especially helpful as innovation efforts proceed. You have always known this and focused on the actual experience of your clients. We need you engaged in innovation to help keep it human centered.

For more on this point I suggest looking up Margaret Hagan at Stanford, see the site Open Law Lab, who has written a book on advocating for what she calls a design-driven approach to legal innovation. Design is the way to generate promising ideas for how legal services could be improved, and then get them developed in quick and effective ways. Her work does a great job on focusing on human centered design for law.

Innovation is not just technology; it is "design" as Ms. Hagan explains: re-thinking our most fundamental approach to how to construct a legal system that can meet the promise of equal justice. Many of the design efforts start with the "100% ATJ" goal. I like that spirit. There are many promising efforts along these lines as well that fit the spirit of JUST innovation.

You have a wonderful example. Hawaii's Access to Justice Commission created a Task Force on Paralegals and Other Nonlawyers last year that transmitted three ideas to the Hawaii Supreme

Court -- a volunteer court navigator program, a tenant advocate program (paralegals representing tenants under the supervision of a legal service provider), and a licensed paralegal practitioner. The Court responded with a green light for development of models for two: the navigator and advocate programs. A model for a pilot navigator program on Maui and Oahu is under review with the Court now, and a model for an advocate program is in the works.

Washington has gone a step further, and did decide to pursue the licensed paralegal practitioner concept, which we call a Limited License Legal Technician (LLLT or more commonly now, just Legal Technician). The Legal Technician is a new mid-level provider authorized by the Washington Supreme Court in 2012. This new class of providers seeks to fill voids in access to legal services in certain defined areas of need. In a civil legal needs study, the Washington State Bar Association (WSBA) identified profound access needs in the area of family law and sought to create providers who could affordably serve these chronically underserved clients. This led to the creation of the Legal Technician, a class of paralegals with specialty training in the area of family law. UW Law does the specialty training and many educational institutions offer paralegal programs.

This innovation has begun to change the landscape regarding access to justice for single persons and parents who would not be able to afford an attorney for his/her divorce or other basic family law matter. After four cohorts of students, Washington has almost 50 licensed Legal Technicians. Although most work in private practice, either as solo practitioners or in small firms, some work for access to justice organizations and NGO's advising clients. Moreover, the supervised hours component of their licensing means that many of them will do volunteer work with non-profit organizations serving families and youth prior to getting their independent license.

We expect the program to grow in family law and it is anticipated that additional practice areas will be added in the future. We also hope other states, including this one, will move in this direction. After all, consider the medical analogy: I might bolt from the room if my doctor came in to draw my blood. I would rather see the person trained to do exactly this task, reserving my doctor for more serious diagnosis and treatments. There is both quality and efficiency that comes from specialization.

There are other examples of design collaborations that are not technology heavy. I will give two examples. One is Washington's Moderate Means Program, a collaborative response by all three of Washington's law schools together with the WSBA to address significant need for legal services in real estate foreclosures. Another is New York's Poverty Justice Solutions. Annually, 20 recent law school graduates are provided two-year fellowships as entry-level attorneys with civil legal service providers in New York City. The program underwrites half the cost of their salaries; participating service providers provide the other half. Fellows are full-time employees of their host organizations and receive the training, supervision, and mentoring support provided to all the organizations' attorneys.

These collaborations within the legal system are critical. Next stage design thinking will also require collaboration across traditional lines -- among judges, lawyers, academics, social justice movements, labor unions, human rights advocates and others -- and now also with technologists,

entrepreneurs, inventors, business leaders, and angel investors, too. Our ranks are expanding; let's welcome these newcomers with open arms. We need them; and frankly, they need us.

Let me close and turn to questions by quoting a lawyer who taught me more about Access to Justice than any other: Mr. Len Schroeter, a fellow Hoosier, founder of the Seattle law firm that still bears his name, architect of Washington's Access to Justice Board, and staunch believer in each person's fundamental right to justice. Len passed away in 2014 at age 90, and inspired generations of justice-seeking lawyers. He was a rebel and a trouble maker in all the best ways, as well as a scholar and a lawyer in all the best ways. In 2000, writing about the turn to the new century, he noted:

“As I look to the future, to me, the only reliable power is not massive wealth, nor military force, nor technology, but the power of the intellect, the compassion of the heart, and the respect for the heritage of all mankind. Hope and optimism for the future is essential. It is the existential necessity for commitment and thoughtful action. It is the best we can offer in a world of rapid change.” Well said Len. Here is to hope and to optimism for a spirit of just innovation that is now growing by leaps and bounds (yottabytes?). Let us nurture it well; I am confident it will help us realize the promise of equal justice under law.

Thank you and now let's open up for dialogue.