

## 2023 HAWAI‘I ACCESS TO JUSTICE CONFERENCE

### “BUILDING TRUST AND UNDERSTANDING ABOUT CIVIL ACCESS TO JUSTICE”

Friday, June 16, 2023

William S. Richardson School of Law, University of Hawai‘i

12:45 - 2:00 p.m.

#### **“Access to Justice and Diversity, Equity, and Inclusion”**

**[Lisa T.K.O. Lum, Dean Camille Nelson, Judge Rebecca Copeland, Isaac Moriwake]<sup>1</sup>**

*Opening remarks.* The panel on Diversity, Equity, and Inclusion (DEI) began with Judge Copeland’s working definitions of the terms.

**Diversity.** Judge Copeland defined diversity as the presence of people with different characteristics, beliefs, and life experiences. It includes race, ethnicity, gender, national origin, tribe, caste, thinking, and communication styles.

**Equality.** Judge Copeland noted that equity is different from equality. Equality relates to giving people the same opportunities and resources, but we all have different experiences and starting points. Accounting for these differences (e.g., the different experiences of lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) individuals, or individuals with different cultural backgrounds) allows us to strive for more equitable outcomes.

**Inclusion.** Judge Copeland described inclusion as striving to ensure that all individuals feel a sense of belonging and feel that their views are valued. An inclusive environment invites participation of all people and does not call on any one person to represent an entire community.

Dean Nelson opened her remarks by inviting attendees to think about how they would design backward the world in which they want to live. When thinking about DEI, we can imagine three people standing outside a solid fence and trying to see an event on the other side. Equality would give each person the same sized box to stand on, but equity would allow us to consider options such as giving a taller box to a shorter person, offering a different solution to a person with mobility issues, and perhaps tearing down the fence. Historically the legal profession is the least diverse of all American professions. She encouraged attendees to think intentionally about tracking, mentoring, and disaggregating data to determine who is missing from the profession. Long before law school, we should be recognizing talent and creating access and opportunity.

---

<sup>1</sup> Teri-Ann Nagata, a member of the Commission’s Committee on Education, Communications, and Conference Planning, prepared this summary.

Isaac Moriwake, Managing Attorney in the Mid-Pacific Regional Office of Earthjustice, described the first DEI panel in the history of the Access to Justice Conference as timely. He noted that he recently visited the Supreme Court Law Library and observed that it had a shelf of anti-racist literature, an indication that the conversation is spreading.

Judge Copeland echoed the panel's comments and encouraged attendees to think intentionally about including people who are missing from conversations. For example, what are we missing when it is difficult for individuals with injuries or disabilities to access public spaces by themselves, or when mothers advocate for their LGBTQI children but are not themselves part of the LGBTQI community?

Lisa Lum, Special Assistant to the Administrative Director of the Courts, discussed DEI efforts at the judiciary. The judiciary has provided implicit bias training for judges and judiciary employees since 2019, has included an instruction on implicit bias in its civil and criminal jury instructions, and, following the killing of George Floyd, sponsored a virtual series of conversations on confronting racial injustice. The judiciary has started to improve data collection relating to judges and employees, and it hopes to improve data collection relating to court users. The judiciary has a DEI working group that includes employees from across the state who discuss topics such as encouraging a sense of belonging, providing internal trainings regarding sexual and gender minorities, microaggressions, and Micronesian culture.

Another priority has been increasing access for speakers of 'Ōlelo Hawai'i. The judiciary established an 'Ōlelo Hawai'i interpreter policy and the Judiciary History Center provides training in 'Ōlelo Hawai'i. Johanna Chock Tam, the Judiciary's 'Ōlelo Hawai'i Program Administrator, discussed efforts to increase 'Ōlelo Hawai'i throughout the court system through efforts such as an 'Ōlelo Hawai'i court interpreter course.

*What facets of DEI resonate with you the most? How have you incorporated DEI into your roles?* Dean Nelson responded by discussing intersectionality. Ensuring that individuals feel that their full selves belong and are empowered takes intentionality, work, and effort. Effort is most impactful when leaders create a position with power, a seat at the table, and funding. DEI requires investment that tracks the investment we put into other departments.

Judge Copeland shared that she has been able to make small but important advances at the judiciary on behalf of the LGBTQI community because Chief Justice Recktenwald empowered her with resources and support.

Mr. Moriwake described racism as a systemic institutional problem, present in the environmental movement and in Hawai'i. In Hawai'i, we must combat not only racism, but also settler colonialism. At Earthjustice, there has been an effort to work toward partnerships. In each case, Earthjustice asks itself not only how it can win, but also how it can empower its clients and the community.

Dean Nelson discussed the Law School's being named one of most diverse law schools in the nation. She noted that there is always more work to be done. For example, she thinks about questions such as: How do individuals ambulate around the law school? How do we invite inclusion? Who is missing in this space? Whose voices do we not hear? When do people opt out and why? How can we make systems and structures more inviting so we can attract and retain faculty, staff, and students?

*What are your thoughts on DEI efforts in organizations? Should those efforts be led by a dedicated position or office, or by a working group?* Mr. Moriwake shared that DEI efforts are led by a dedicated employee at Earthjustice. Efforts started with committees of employees, but committees were hindered because employees were addressing DEI in addition to performing their other work and had no authority. Eventually Earthjustice created an office to address DEI issues. This institutionalized leadership's commitment to DEI. The resulting conversations have been messy and painful, but it has been a uniformly good thing to start these conversations and grapple with these issues.

Judge Copeland shared that she was not sure how organizations could effectively pursue DEI without creating a dedicated office to ensure that efforts are made throughout the organization.

Dean Nelson shared that it is important to have people dedicated to guiding us in DEI conversations. These conversations are difficult. Tyre Nichols' death, for example, raised disquieting and traumatizing questions about intersectionality and the culture of the Memphis police force.

*How do individuals continue to push for DEI in the face of pushback that feels disheartening on many levels?* Dean Nelson observed that individuals are feeling pushback because they are seeing progress. Individuals need to continue having open conversations with open hearts and trying to do something positive, even if the issue does not directly affect them or their families.

Mr. Moriwake encouraged attendees to embrace their kuleana to make Hawai'i the best it can be. The antidote to backlash is more diversity. Legal history in Hawai'i includes success stories and advances such as a diversified Hawai'i Supreme Court, Chief Justice William S. Richardson, public beaches,

water rights, Native Hawaiian rights, and marriage equality. We have a privilege and responsibility in Hawai'i to continue the good work that Hawai'i has been doing in the DEI space.

Judge Copeland encouraged attendees to keep doing the hard work of advocating for DEI. She also encouraged attendees to extend grace to themselves and others as they have these difficult conversations.

Dean Nelson added that DEI efforts should be backed by investment, which makes DEI efforts more durable. While it is important for organizations to have missions, visions, and values, their money should follow who they say they are and who they want to be.

*How does DEI affect your organizations?* Judge Copeland noted that the judiciary has an extremely broad anti-discrimination policy and offers substantial DEI training for judges.

Mr. Moriwake discussed how DEI has affected Earthjustice's legal practice. For example, when the Hawai'i Supreme Court recognized a constitutional right to participate in ratepayer cases, the Public Utilities Commission created a new docket on energy equity and energy justice. There are now efforts to broaden access to clean energy and to engage the community when there are large solar or wind projects proposed.

Dean Nelson shared that DEI affects several lines of thinking. For example, when thinking about succession planning, leaders can consider whether they are in conversation with people who are not like them. There is not a space in the legal profession in which DEI and justice concerns do not exist. In addition to literature on DEI in law firms and the judiciary, literature on particular sections, such as the patent bar, has started to consider what the future will look like and whether sections of the profession would benefit from having more diverse viewpoints.

Judge Copeland discussed a need to be comfortable going into the community, and Mr. Moriwake described the hard work that Earthjustice has done to address DEI in hiring and retention.

*What consequences do you expect from the U.S. Supreme Court's upcoming decision on affirmative action?* Dean Nelson described a need to be intentional about parsing the decision and to look to states such as California and Michigan and the changes that they have made to their admissions policies following their state propositions prohibiting affirmative action in public education. She noted that the Law School will be considering such questions as what is our mission, what resources do we have, and what does state law have to say about this mission?

*What is one takeaway that attendees can take back to their organizations?* Mr. Moriwake encouraged attendees to instill a learning culture in their organizations and to move past cancel culture. Judge Copeland encouraged attendees to do an honest assessment of their organizations and to recognize that small efforts, such as an email recognizing Pride Month, may not be enough. Dean Nelson shared that, in the same way that organizations prepare for changes in the budget or interest rates, they should be preparing for changes relating to DEI and affirmative action.