

# “Paying Rent”: The Access to Justice Movement During the Moon Years

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*“C.J.’s father used to say that public service is the rent we pay for the space we occupy on earth.”*

Thomas Keller, Administrative Director for the Courts (ret.), explaining Chief Justice Moon’s passion for public service.<sup>1</sup>

## I. INTRODUCTION

Chief Justice Ronald Moon often told this “Paying Rent” story to preface his public remarks on the responsibility of attorneys to serve the legal needs of the poor. He told it often enough that some listeners wondered if he had forgotten his previous recountings or if he just deeply believed in the wisdom of his father. From other stories he shared about his parents during his tenure as chief justice, the latter is the likely explanation.

Although the demands of the court and the state judiciary made it difficult for him to focus on the legal needs of the poor, Chief Justice Moon was considered an ally by those who advocated for disadvantaged individuals and groups. Steadily encouraging, he opened his door to key leaders of the local Access to Justice Movement, was willing to listen, and gladly pitched in whenever a project or event needed his presence and imprimatur. Getting support from the head of the judiciary was important in a period of notable economic and social changes that exacerbated the grim access to justice picture in Hawai‘i, which was never good to begin with. Although some criticized his support as short of what was needed to open the courthouse doors to all, Chief Justice Moon never let the “access” message go dead, which accounted for the periodic retellings of his “Paying Rent” story.

This article attempts to capture the challenges of the Access to Justice Movement<sup>2</sup> during Ronald Moon’s 1993-2010 tenure as chief justice, and

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<sup>1</sup> Susan Pang Gochros, *Aloha, Chief Justice Moon*, HAW. B.J., Sept. 2010, at 4, 10.

<sup>2</sup> In this article, the “Access to Justice Movement” refers to the historical growth and evolution of access to justice efforts in the State of Hawai‘i. The author acknowledges that this is a narrow construction. A broader construction would contemplate other dimensions of “movement,” for example, one that might look beyond finding adequate legal assistance

the efforts to respond to the challenges. Although the journey remains steep, the Movement continues to place one foot ahead of the other in sometimes halting but always forward steps. To see the way, a light needs to be present. Many, including Chief Justice Moon, have contributed the necessary illumination.

The seventeen years during which Chief Justice Moon served at the helm of the judiciary witnessed a few vigorous strides in the Access to Justice Movement. However, as with all periods of expansion and maturation, these seventeen years also saw “growing pains.” Hopefully, these difficult experiences have given the Movement new muscle to redouble its effort at achieving what Chief Justice Moon called “meaningful access” without which “the law simply becomes an unfulfilled promise.”<sup>3</sup> Certainly, the birth and growth of the Hawai'i Access to Justice Commission in the last three years provide a recent measure of this effort. However, the story of the Movement has never been about one accomplishment or event, no matter how momentous, and its chapters continue to be written. This essay presents several glimpses of this story as it unfolded during Chief Justice Moon's tenure.

## II. STEPPING THROUGH A PERIOD OF CHANGE

The year 1990 recorded not only the appointment of Ronald Moon as an associate justice to the Hawai'i Supreme Court, but also a loud “pop” as a period of economic well-being for the state suddenly stalled. The pop was in large part due to the collapse of the “bubble” of Japanese real estate investments in the islands.<sup>4</sup> Combined with the start of a recession in the

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for each indigent person with a legitimate legal need, and instead “ooze” toward mechanisms, even extra-legal ones, that provide individuals with a just solution. That is a topic for another article.

<sup>3</sup> Ronald T.Y. Moon, Chief Justice, Haw. Sup. Ct., Address at the Hawai'i Justice Foundation Annual Meeting (Nov. 4, 2004), available at [http://www.courts.state.hi.us/news\\_and\\_reports/speeches/2004/11/november\\_4\\_2004.html](http://www.courts.state.hi.us/news_and_reports/speeches/2004/11/november_4_2004.html).

<sup>4</sup> Tiffany Hill et al., *The Japanese Real Estate Bubble Pops—December 1990*, HONOLULU, Aug. 2009, at 75, available at <http://www.honolulomagazine.com/Honolulu-Magazine/August-2009/50-Moments-of-Statehood/1990s/index.php>. At the height of the Japanese investment boom in Hawai'i, Japanese investors owned 11% of the total value of real property in the state and 65% of hotel rooms. This was part of the \$3.8 billion dollars Japanese citizens poured into the local economy. *Hawai'i Timeline: 1990*, HawaiianHistory.org, <http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&year=1990> (last visited Feb. 5, 2011). However, as the 1990s approached, the Japanese economy plummeted, and with it, Japanese real estate investments in Hawai'i. *Hawai'i Timeline: 1989*, HawaiianHistory.org, <http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&year=1989> (last visited Feb. 5, 2011).

United States, the closure of California military bases and defense plants, and the uncertainty of air travel following the 1991 Gulf War,<sup>5</sup> the withdrawal of Japanese investment reduced the flow of economic spigots to the state. This meant rising unemployment, less construction, and the slowing of retailing. Declines in both the American and Japanese economies caused visitor counts to stagnate, if not drop.<sup>6</sup> This loss of tourism dollars could no longer be offset by other major industries, specifically sugar and pineapple production, which were already in severe decline, if not altogether stopped.<sup>7</sup> Not surprisingly, real per capita personal income did not change through most of the 1990s.<sup>8</sup>

At the end of the decade, a recovery slowly developed in the state.<sup>9</sup> This recovery continued through summer 2001 despite a slowing U.S. economy.<sup>10</sup> Unfortunately, it abruptly halted with the terrorism attack of September 11, 2001, as domestic and foreign tourism declined sharply in response to air travel concerns.<sup>11</sup>

Predictably, the state's economic decline struck hardest those who lived at the margins, with little reserve to withstand a prolonged assault on the state's financial well-being. U.S. Census Bureau figures in 2000 reported that poverty grew in Hawai'i by an astounding thirty-eight percent between 1989 and 1999, representing an increase of over 6000 impoverished families.<sup>12</sup> Strikingly, the same period saw a forty-five percent boost in the

<sup>5</sup> Sumner J. LaCroix, *The Economic History of Hawai'i: A Short Introduction* 13-14 (Univ. of Haw. Dep't of Econ. Working Paper No. 02-3, Jan. 2002), available at [http://www.economics.hawaii.edu/research/workingpapers/WP\\_02-3.pdf](http://www.economics.hawaii.edu/research/workingpapers/WP_02-3.pdf).

<sup>6</sup> HAW. STATE DEP'T OF BUS., ECON. DEV. & TOURISM, HAWAII'S ECONOMY 1 (1999), available at [http://hawaii.gov/dbedt/info/economic/data\\_reports/hawaii-econ/he7-99.pdf](http://hawaii.gov/dbedt/info/economic/data_reports/hawaii-econ/he7-99.pdf).

<sup>7</sup> See LaCroix, *supra* note 5, at 14.

<sup>8</sup> *Id.*

<sup>9</sup> Kelli Abe Trifonovitch, *Let the Good Times Roll—Again*, HAW. BUS., Aug. 2000, at 18, 18, available at <http://www.hawaiiibusiness.com/Hawai'i-Business/August-2000/Let-The-Good-Times-Roll-Again>.

<sup>10</sup> LaCroix, *supra* note 5, at 14.

<sup>11</sup> *Id.*

<sup>12</sup> Lynda Arakawa, *People in Poverty Increasing in Hawai'i*, HONOLULU ADVERTISER, May 14, 2002, available at <http://the.honoluluadvertiser.com/article/2002/May/14/ln/ln08a.html>. A recent release of U.S. Census figures indicates that Hawai'i has never quite broken free from this surge. As reported by the *Honolulu Star-Advertiser* on September 17, 2010, poverty in Hawai'i now stands at its highest since 1997 with 12.5% of the population, or approximately 156,000 individuals, living at or below the federal poverty level for the state. Mary Vorsino, *Poverty in Hawai'i Highest Since '97*, HONOLULU STAR-ADVERTISER, Sept. 17, 2010, at A1. Most startling is the number of impoverished children—nineteen percent of all children in Hawai'i, up almost five percent from the year before. *Id.*

number of poor families headed by single women.<sup>13</sup> Some of the poverty rate increase was attributed to a sizeable influx of foreign-born nationals with limited earning capacity.<sup>14</sup> But most of it was attributable to the stagnant state economy.<sup>15</sup>

One social phenomenon festered into a painful sore through the 1990s and impacted the amount and character of legal need among financially vulnerable groups. As reported by legal and social services providers, the scourge of the methamphetamine epidemic in Hawai'i, which began in the late 1980s,<sup>16</sup> brought further heartache, especially among those without resources to buffer its impact.<sup>17</sup> The grip of ice addiction disrupted the fabric of many households, causing violent crimes, domestic violence, family dissolution, homelessness, financial distress, and other social ills to deepen.<sup>18</sup> At least anecdotally, this exacerbated an already crushing need

<sup>13</sup> Vorsino, *supra* note 12, at A1.

<sup>14</sup> *Id.*

<sup>15</sup> This was the observation of Professor Sylvia Yuen, director of the Center on the Family at the University of Hawai'i at Mānoa. *Id.*

<sup>16</sup> The drug first arrived in Hawai'i in the 1980s from Taiwan and South Korea, and its use became widespread in Hawai'i by 1988. KCI: The Anti-Meth Site, *Methamphetamine FAQ*, [http://www.kci.org/meth\\_info/faq\\_meth.htm](http://www.kci.org/meth_info/faq_meth.htm) (last visited Feb. 5, 2011).

<sup>17</sup> The National Drug Intelligence Center (NDIC) reported that methamphetamine abuse "more than doubled from 1994 through 2000." Nat'l Drug Intelligence Ctr., Hawai'i Drug Threat Assessment (2002), available at <http://www.justice.gov/ndic/pubs07/998/meth.htm>. The Center found that by 2000, Honolulu had the highest percentage of adult male arrestees who tested positive for methamphetamines among cities tracked by the Center. *Id.*

<sup>18</sup> These were detailed in a series of articles published in the *Honolulu Advertiser* from September 14 through September 16, 2003. Written by journalist Kevin Dayton, the series detailed the short- and long-term social, physical, psychological, and financial devastation cause by methamphetamine addiction in Hawai'i. This series is available at <http://the.honoluluadvertiser.com/current/ln/childrenoffice>.

Describing the destructive cost of addiction upon the methamphetamine user and those around him, Charles Goodwin, special agent in charge of the Honolulu FBI Division, provided this testimony in 2002 to the U.S. House Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources:

Crystal methamphetamine, commonly known as ice, is the drug of choice in Hawai'i. The sale, use and transportation of crystal methamphetamine in Hawai'i has had a devastating impact on all of Hawaiian society. As we all are acutely aware, crystal methamphetamine tears away at the inner fabric of Hawai'i. Crystal methamphetamine brings violence to our streets. Crystal methamphetamine wastes young lives and wreak[s] havoc on families. Crystal methamphetamine saps millions of dollars out of our economy every year. . . . In 2002, U.S. Attorney Ed Kubo stated that crystal methamphetamine had been associated with over 90 percent of confirmed child abuse cases.

*Hearing Before the Subcomm. on Criminal Justice, Drug Policy & Human Res. of the H. Comm. on Oversight & Gov't Reform, 108th Cong. (2004) (statement of Charles L.*

for legal intervention among the poor. To add insult to injury, because much of the drug was imported, its sales, estimated at over \$400 million annually, meant that money drained from the state, further straining its economic health.<sup>19</sup>

From this mix of economic and social factors, a litany of legal problems followed. Flooding the offices of legal services providers were individuals who reported evictions, insurmountable debts and relentless debt collectors, the surrender of property including homes, family unravelings, the failure of increasingly porous and thinned government safety nets, the loss of children due to alleged parental neglect or abuse of children, and other problems.

Responding to this cry for help was daunting, but the 1990s saw a maturing of access to justice groups that were resolved to lean into the growing community need. The decade saw veteran organizations adjust their tack to changing realities, and newer groups sprout and blossom. Growing pains were inevitable, and by the end of the 1990s, palpable tensions emerged among some of the principal members of the local Access to Justice Movement. Yet, united by the common and enduring vision of equal justice to all, Movement members have always found a way to come back together and confront the unrelenting need for legal services among the poor. As noted below, legal needs assessments performed in 1993 and 2007 stated what everyone knew: the level of need was deep, maybe even overwhelming, but giving up was not an option. Throughout Ronald Moon's term as chief justice, legal services providers understood this and found new—although not always ideal—ways to stay alive and fight another day.

#### *A. The Growth of the Legal Services Provider Community*

As the 1990s began, the cadre of legal services providers whose core mission targeted the legal needs of the poor stood on ground that was freshly tilled and ripe for opportunity. In some cases, the opportunity emerged

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Goodwin, Special Agent in Charge, Honolulu Div., Fed. Bureau of Investigation), *available at* <http://www.fbi.gov/news/testimony/the-poisoning-of-paradise-crystal-methamphetamine-in-hawaii>.

<sup>19</sup> The NDIC described criminal elements from Mexico and Asia as the main source of the drug. Nat'l Drug Intelligence Ctr., *supra* note 17. Another financial dimension of methamphetamine use is the cost of treating users, which now number about 14,000. Hospitalizations (Inpatient and Ed) for Methamphetamine—Hawaii, Haw. Health Info. Corp., <http://hhic.org/meth.asp> (last updated Nov. 27, 2007). Relatively recent information from the Hawai'i Health Information Corporation indicate that between 2000 and 2006, the hospitalization rate per 100,000 Hawai'i residents due to methamphetamine increased forty-one percent, with much of it coming from the financially strapped Wai'anae coast. *Id.* Hospitalization and emergency room treatment cost \$43 million in 2006, sixty-six percent of it from state coffers. *Id.*

from hardship. The largest and oldest of these groups, the Legal Aid Society of Hawai'i (LAS), was coming to grips with a scathing 1991 report from its principal federal funder, which characterized the public interest law firm as a "troubled grantee."<sup>20</sup> The report described the loss of experienced staff, the shuttering of offices and intake hours, lost grants, and generally reduced legal services to the poor.<sup>21</sup> Although a competing report from a trio of consultants found the firm healthier than described in the funder's report,<sup>22</sup> LAS continued to grapple with huge cuts. These cuts began a few years earlier when an unsympathetic federal administration slashed allocations to legal aid groups nationally and imposed restrictions that hamstrung these groups from pursuing certain activities, such as class action litigation, welfare reform lobbying, and representation of certain non-citizen individuals.<sup>23</sup> With the crippled state economy, LAS could not count on local government to buffer the disappearance of federal funds. The remainder of the decade would see LAS aggressively develop creative strategies to remain financially viable; however, these carried their own costs.

While LAS battled to regain solid footing, other public interest law groups established in the 1980s found their legs. Established in 1981 to complement LAS's direct legal services to the poor,<sup>24</sup> Hawai'i Lawyers Care (HLC) celebrated its first decade of existence as the community's formal pro bono law program with the hiring of its first full-time pro bono coordinator.<sup>25</sup> Its trajectory looked promising as the availability and growth of Interest on Lawyers' Trust Account (IOLTA) funds<sup>26</sup> soared and

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<sup>20</sup> LEGAL SERVS. CORP., REPORT OF THE LEGAL SERVICES CORPORATION ON THE LEGAL AID SOCIETY OF HAWAII: FINDINGS AND RECOMMENDATIONS 16 (1991).

<sup>21</sup> *Id.*

<sup>22</sup> See generally JOHN A. TULL, MARTHA BERGMARK & HARRISON McIVER, REPORT AND RECOMMENDATIONS TO THE BOARD OF DIRECTORS OF THE LEGAL AID SOCIETY OF HAWAII (1991).

<sup>23</sup> THE SPANGENBERG GROUP, ASSESSMENT OF CIVIL LEGAL NEEDS OF LOW- AND MODERATE-INCOME PEOPLE IN HAWAII 13, 23 (1993) [hereinafter THE SPANGENBERG REPORT]; see also Alan W. Houseman & Linda E. Perle, *What You May and May Not Do Under the Legal Services Corporation Restrictions*, in NAT'L CTR. ON POVERTY LAW, POVERTY LAW MANUAL FOR THE NEW LAWYER 242, 243-45 (2002), available at <http://www.povertylaw.org/poverty-law-library/research-guides/poverty-law-manual/houseman-perle.pdf> (last visited Feb. 5, 2011).

<sup>24</sup> Tammy Laurence, *Hawai'i Lawyers Care—Past, Present and Future (Part One)*, HAW. B.J., May 1992, at 29, 29.

<sup>25</sup> Thomas Stirling, *Report of the HSBA Standing Committee on Delivery of Legal Services to the Public*, in HAWAII STATE BAR ASSOCIATION 1991 ANNUAL REPORT, HAW. B. NEWS, Feb. 1992, at S-6.

<sup>26</sup> Tammy Laurence, *Hawai'i Lawyers Care—Past, Present and Future (Part Two)*, HAW. B.J., June 1992, at 15, 15. In 1983, the Hawai'i Bar Foundation became responsible

the Hawai'i Bar Foundation, the administrator of these funds, strategically committed its resources to groups, such as HLC, that directly delivered legal services to the poor.<sup>27</sup> Indeed, through the remainder of the decade, HLC regularly received the largest of the many awards granted by the Foundation.<sup>28</sup> Its staff, physical facilities, and programs enjoyed noteworthy growth through the decade. However, by the end of the decade, HLC's clout would become a sore point as it competed for shrinking resources to sustain its position and cultivate further growth.

The Hawai'i Bar Foundation experienced its own surge in the 1990s. Established in 1969 "to support other non-profit agencies operating in law-related fields," the Foundation assumed responsibility for administering IOLTA funds in 1983.<sup>29</sup> In 1991, the Hawai'i Supreme Court required all attorneys who established client trust accounts to participate in the IOLTA program.<sup>30</sup> Participation meant transferring the interest accrued on such accounts into the IOLTA program. This quickly and significantly enlarged the Foundation's capacity as a funding source. Indeed, IOLTA income shot from about \$50,000 to over \$550,000 from 1985 to 1996, peaking at \$736,000 just a year after IOLTA participation became mandatory.<sup>31</sup> With a suddenly larger pot to draw from, the Foundation, which renamed itself the Hawai'i Justice Foundation to reflect its broadening mission,<sup>32</sup> was well-positioned to support and influence the growth of the Access to Justice Movement in the century's last decade. Its handprint would be everywhere from financial grants to major public interest law organizations on all islands to the establishment of a statewide legal hotline for the poor (dubbed the Information System Legal Aid Network Statewide or "ISLANS").<sup>33</sup>

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for administering and distributing funds. Peter S. Adler, *Lawyers and Philanthropy: The Hawai'i Justice Foundation Comes of Age*, HAW. B.J., Dec. 1996, at 9, 10, 12 [hereinafter Adler, *Lawyers and Philanthropy*]; Peter S. Adler, *What is the Hawai'i Bar Foundation?*, HAW. B.J., July 1992, at 18, 18 [hereinafter Adler, *Hawai'i Bar Foundation*].

<sup>27</sup> Adler, *Lawyers and Philanthropy*, *supra* note 26, at 12.

<sup>28</sup> E.g., HAW. JUSTICE FOUND., 1996 ANNUAL REPORT 6 (1997) (showing HLC with the highest award among all grantees in 1996 with an award \$110,000) [hereinafter HJF 1996 Report]; HAW. JUSTICE FOUND., 1997 ANNUAL REPORT 3 (1998) (showing HLC with the largest regular grants totaling \$60,000 in 1997) [hereinafter HJF 1997 Report]. See also *infra* note 51.

<sup>29</sup> Adler, *Lawyers and Philanthropy*, *supra* note 26, at 10, 12; Adler, *Hawai'i Bar Foundation*, *supra* note 26, at 18.

<sup>30</sup> HJF 1996 Report, *supra* note 28, at 5; Adler, *Lawyers and Philanthropy*, *supra* note 26, at 12.

<sup>31</sup> See *id.*

<sup>32</sup> Adler, *Lawyers and Philanthropy*, *supra* note 26, at 10, 12; Adler, *Hawai'i Bar Foundation*, *supra* note 26, at 18.

<sup>33</sup> Adler, *Lawyers and Philanthropy*, *supra* note 26, at 14-16.

Smaller, equally important public interest law firms serving “niche” populations also staked their place in the community. In 1991, the Domestic Violence Clearinghouse and Legal Hotline began its work of providing legal information and advocacy for victims of domestic violence.<sup>34</sup>

In the same year, the University of Hawai'i Elder Law Program, serving financially and socially needy older adults, opened its doors at the William S. Richardson School of Law where it remains a center of elder law activity and provides opportunities for budding lawyers to assist older adults in the community.<sup>35</sup> Representing impoverished immigrants, Na Loio No Na Kanaka continued to toil from its humble offices at Palama Settlement where it was founded in 1983,<sup>36</sup> largely in response to federal restrictions that barred local Legal Aid offices from working with immigrant populations.<sup>37</sup> Moving forward too was the Native Hawaiian Legal Corporation, which started as a volunteer-run referral service, but in the 1980s grew into a full-service law firm for Hawaiian individuals who needed legal assistance, especially with land-related and traditional rights issues.<sup>38</sup> Other fledgling legal clinics, including the Life Foundation Legal Clinic (for individuals diagnosed with HIV or AIDS)<sup>39</sup> and the Maximum Legal Services Disabled Rights Project (special education and conservatorships),<sup>40</sup> continued to

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<sup>34</sup> Domestic Violence Action Center, <http://www.stoptheviolence.org/about-us> (last visited Feb. 5, 2011); see also Daniel G. Heely, *Family Court Bulletin—The Domestic Violence Clearinghouse Project*, HAW. B. NEWS, Aug. 1991, at 9, 9.

<sup>35</sup> Univ. of Haw. Elder Law Program, <http://hawaii.edu/uhelp/staff.htm> (last visited Feb. 5, 2011); see also James H. Pietsch, *Legal Issues Concerning Medical Treatment Decisions*, HAW. B.J., Dec. 1995, at 28, 30 n.2.

<sup>36</sup> See generally *Non-Profits Come Together in Tough Times: Hawai'i Immigrant Center Joins the Legal Aid Society of Hawai'i*, HAW. B.J., Mar. 2010, at 26, 26; see also HAW. IMMIGRANT JUSTICE CTR., <http://www.hijcenter.org> (last visited Feb. 5, 2011).

<sup>37</sup> See Houseman & Perle, *supra* note 23, at 244-45.

<sup>38</sup> NATIVE HAWAIIAN LEGAL CORP., <http://nhlchi.org/> (last visited Feb. 5, 2011); see also THE SPANGENBERG REPORT, *supra* note 23, at 170-71.

<sup>39</sup> THE SPANGENBERG REPORT, *supra* note 23, at 208-09; cf. HJF 1996 Report, *supra* note 28, at 6 (showing a \$3000 grant to Life Foundation to help train lawyers and provide HIV-related legal services); HJF 1997 Report, *supra* note 28, at 3 (showing a \$5000 grant to Life Foundation to train seven volunteer lawyers to assist 224 HIV clients).

<sup>40</sup> See generally MAXIMUM LEGAL SERVS. CORP., HARRY & JEANETTE WEINBERG KUKUI CTR., <http://kukuicenter.org/maximum-legal-services-corporation/> (last visited Feb. 5, 2011); THE SPANGENBERG REPORT, *supra* note 23, at 210-11; HAW. JUSTICE FOUND. ET AL., ACHIEVING ACCESS TO JUSTICE FOR HAWAI'I'S PEOPLE: THE COMMUNITY WIDE ACTION PLAN: TEN ACTION STEPS TO INCREASE ACCESS TO JUSTICE IN HAWAI'I BY 2010 AND THE 2007 ASSESSMENT OF CIVIC LEGAL NEEDS AND BARRIERS OF LOW-AND MODERATE-INCOME PEOPLE IN HAWAI'I I-B (2007) [hereinafter HAWAI'I 2007 LEGAL NEEDS ASSESSMENT].



trudge forward to provide legal assistance to communities of need that were either newly identified or found new emphasis in the 1980s.<sup>41</sup>

### B. *Developing a Culture of Pro Bono Consciousness*

The year Chief Justice Moon assumed the helm of the Hawai'i State Judiciary coincided with the end of the Hawai'i state bar's two-year experiment with voluntary pro bono. In 1991, the bar's Committee on the Delivery of Legal Services to the Public (DLSP) concluded a multi-year study and debate on whether mandatory pro bono should be imposed on licensed attorneys in Hawai'i.<sup>42</sup> Already chafing from a decision a few years before to require membership in the Hawai'i State Bar Association, some bar members strongly opposed what they viewed as further intrusion.<sup>43</sup>

In 1991, DLSP proposed the two-year experiment to determine if voluntary pro bono participation would be sufficiently beneficial to avoid imposing a mandatory obligation. Under the plan, each attorney was asked to perform twenty-four hours of pro bono work annually.<sup>44</sup> Notably, at about the same time, the William S. Richardson School of Law adopted its sixty-hour pro

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<sup>41</sup> THE SPANGENBERG REPORT, *supra* note 23, at 2. An additional organization, Protection and Advocacy Agency of Hawai'i, which provided a mix of legal and social advocacy for disabled individuals, continued to thrive in the 1990s. *Id.* at 211. Originally founded in the late 1970s, this agency fulfilled a federal mandate under the Developmental Disabilities Assistance and Bill of Rights Act of 1975 and subsequently assumed other responsibilities under federal laws that secure the legal, civil, and human rights of disabled individuals. HAW. DISABILITY RIGHTS CTR., [http://hawaii-disabilityrights.org/Center\\_Mission.aspx](http://hawaii-disabilityrights.org/Center_Mission.aspx) (last visited Feb. 5, 2011). Renamed the Hawai'i Disability Rights Center in 2000, it continues to provide a legal voice for the developmentally disabled, the mentally ill, and other groups with disabilities on all major islands. *Id.*

<sup>42</sup> On April 18, 1991, the Directors of the Hawai'i State Bar Association adopted a Pro Bono Resolution that "[e]ncourage[d] each of its members to make an individual commitment to perform at least two (2) hours per month of pro bono legal service, and/or to have at least one pro bono matter ongoing at all times." *Pro Bono Resolution HSBA Board of Directors*, HAW. B. NEWS, June 1991, at 14, 14. This resolution followed a multi-year evaluation by the HSBA's Standing Committee on the Delivery of Legal Services to the Public of two proposals: one for mandatory pro bono, another for voluntary pro bono. Sheryl L. Nicholson, *Delivery of Legal Services to the Public*, in HAWAII STATE BAR ASSOCIATION 1990 ANNUAL REPORT, HAW. B. NEWS, Feb. 1991, at S-6. In the end, the latter approach prevailed. See Victor Geminiani, *Reinventing Pro Bono Service in Hawai'i*, HAW. B.J., Dec. 2004, at 9, 9-10.

<sup>43</sup> This resistance explained the position of then-incoming HSBA President Paul Alston, a strong advocate for mandatory pro bono activity, "to give[] up on mandatory pro bono for this year." Carol Muranaka, *Paul Alston: A Cheerleader, an Idealist*, HAW. B. NEWS, Jan. 1991, at 14, 17. He explained, "It's not worth fighting." *Id.*

<sup>44</sup> Val Tavai, *Yes, Virginia, Attorneys in Hawai'i Provide Pro Bono*, HAW. B.J., Dec. 1992, at 8, 8; Thomas L. Stirling, *supra* note 25, at S-6.

bono requirement for graduation, thus becoming one of the first law schools in the nation to do so.<sup>45</sup> Ironically, one of the main concerns regarding this requirement was the insufficiency of pro bono opportunities and supervision from traditional legal services providers and attorneys accepting pro bono cases.<sup>46</sup> This helped explain the decision to allow students to fulfill their pro bono requirement through judicial clerkships and other government placements.<sup>47</sup>

At the end of the two-year experiment, the bar decided not to revisit the “mandatory v. voluntary” debate.<sup>48</sup> Instead, it directed its attention to a newly proposed model rule for pro bono activity promulgated by the American Bar Association.<sup>49</sup> Now known as “Rule 6.1,” the proposed rule urged attorneys to aspire to fifty hours of pro bono legal work annually.<sup>50</sup> Limiting pro bono work to law-related activities<sup>51</sup> that alleviated the legal needs of indigents, the proposed rule also allowed attorneys to make a voluntary financial contribution to law-related organizations working with financially needy groups if personal or employment circumstances made it difficult or impossible to engage in pro bono work.<sup>52</sup> Before the end of 1993, the bar submitted the proposal to the Moon-led Hawai'i Supreme Court for adoption, which the court quickly did. In doing so, it established Hawai'i as the first state to adopt Rule 6.1 in its Code of Professional Responsibility.<sup>53</sup>

The adoption of the rule did not cause a sea of change in attitudes about pro bono, but its presence helped sustain the conversation about a lawyer's

<sup>45</sup> William S. Richardson Sch. of Law, Univ. of Haw. at Mānoa, *Pro Bono Program*, <http://www.law.hawaii.edu/pro-bono-program> (last visited Feb. 5, 2011). The requirement was adopted in 1992 and first applied to the entering class that year. *Id.*

<sup>46</sup> E-mail from Jim Pietsch, Professor, William S. Richardson Sch. of Law, Univ. of Haw. at Mānoa, to author (Dec. 31, 2010, 10:25 HST) (on file with author).

<sup>47</sup> *Id.*

<sup>48</sup> John Yamano, *Report of the HSBA Standing Committee on Delivery of Legal Services to the Public*, in HAWAII STATE BAR ASSOCIATION 1992 ANNUAL REPORT, HAW. B. NEWS, Feb. 1993, at S-6.

<sup>49</sup> *Id.*

<sup>50</sup> Coralie Chun Matayoshi, *New Year Brings New Commitment to Pro Bono*, HAW. B.J., Jan. 1994, at 7.

<sup>51</sup> The comments that were ultimately adopted with Rule 6.1 described “legal services” to include “a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, and the provision of free training or mentoring of those who represent persons of limited means.” HAW. R. PROF'L CONDUCT 6.1 cmt. This variety was intended to offer opportunities for attorneys, such as those employed by the government, to engage in work that did not involve the traditional attorney-client relationship.

<sup>52</sup> *Id.* at 6.1(b)(3).

<sup>53</sup> Matayoshi, *supra* note 50, at 7.

pro bono service obligations. It also provided leverage for continued growth in the pro bono sector. As stated earlier, Hawai'i Lawyers Care firmly gained its foothold by the early 1990s and was positioned to grow.<sup>54</sup> Its importance was underscored by the appearance of a "dues check-off" for Hawai'i Lawyers Care in the 1990 HSBA Annual Attorney Registration Form.<sup>55</sup> This gave every attorney in the state an opportunity to donate to the organization while completing his or her annual registration. With both Rule 6.1 and increased IOLTA funding<sup>56</sup> at its back, HLC leaped to prominence, moving from a small room adjacent to the state bar office to a multi-room suite located in a new building near the state circuit court in Honolulu.<sup>57</sup> It established a regular quarterly newsletter in the Hawai'i Bar Journal.<sup>58</sup> It expanded its community legal clinics where attorneys, almost all working pro bono, dispensed advice and brief service in substantive areas like family law, taxes, and non-profit organizations.<sup>59</sup> It also targeted special populations like homeless individuals and families, children, and domestic violence victims, creating special units and adding new hires to staff them.<sup>60</sup> To reflect the expansion of its mission and work, it also adopted a new name in 1999: Volunteer Legal Services Hawai'i.<sup>61</sup>

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<sup>54</sup> With the hiring of its first full-time pro bono coordinator, Val Tavai, HLC began laying down new infrastructure for lawyer pro bono activities in the state. Thomas Stirling, then-chair of the HSBA's DLSP Committee, queried whether DLSP had any more to do in light of HLC's willingness and apparent capacity to singlehandedly grab the reins of the pro bono movement in the community. See Stirling, *supra* note 25, at S-6.

<sup>55</sup> When first established in 1990, the suggested donation was \$40. THE SPANGENBERG REPORT, *supra* note 23, at 216. The early years of the check-off option annually raised about \$63,000 for HLC. *Id.* This dues check-off continues to this day. Over the past few years, other legal services providers have requested that the dues check-off be broadened to benefit public interest firms other than HLC, now known as Volunteer Legal Services Hawai'i. *E.g.*, Minutes of the Hawai'i State Bar Association Board of Directors 4-5 (June 19, 2003) (reporting LAS's and the Domestic Violence Clearinghouse and Legal Hotline's request to be listed in the voluntary donation check-off).

<sup>56</sup> Between 1983 and 1996, HLC received over \$1,000,000 from the Hawai'i Justice Foundation and was acknowledged as the Foundation's biggest recipient during this period. ANN BARTSCH, FRANK CHONG & WILLIAM DODD, REPORT OF PROGRAM EVALUATION – HAWAII LAWYERS CARE 1, 1 (July 1996).

<sup>57</sup> See *Volunteer Legal Services Newsletter*, HAW. B.J., Sept. 1999, at 25, 25, 27.

<sup>58</sup> For many years, HLC had a regular although small presence in the Hawai'i Bar News which later became the Hawai'i Bar Journal. This evolved into an end-of-the year "focus on pro bono" issue in December of each year, starting in 1991. These issues more often than not spotlighted HLC activities. Beginning in 1997, the Journal began to publish quarterly HLC newsletters.

<sup>59</sup> See Stacy Fukuhara-Barclay, *Volunteering Made Easy*, HAW. B.J., Dec. 2004, at 14, 14-15; *cf.* *Volunteer Legal Services Newsletter*, HAW. B.J., Mar. 2001, at 25, 26-31.

<sup>60</sup> Fukuhara-Barclay, *supra* note 59, at 14. Remarkably, the staff at VLSH (formerly known as HLC) grew from less than a handful at the start of the 1990s to as many as

This momentum received an additional boost with a Honolulu Pro Bono Summit convened by Chief Justice Moon.<sup>62</sup> The summit assembled every Honolulu law firm with five or more attorneys and gave rise to a frank conversation on barriers to pro bono experienced by attorneys and how these barriers could be surmounted. Following this summit, each firm committed to developing or refining its Pro Bono Implementation Plan for submission to Chief Justice Moon.<sup>63</sup>

In sum, the first several years surrounding the start of Chief Justice Moon's tenure saw a flexing of the "pro bono arm" of the Access to Justice Movement. It clearly had energy sparked by an ascendant pro bono organization, a new professional conduct rule, willing funders, community leadership, and institutional support. Although the challenge of recruiting, retaining, training, and supporting pro bono attorneys was never easy, a sense of hope pervaded the 1990s and into the twenty-first century that attorneys would respond to what should be among the profession's core responsibilities: alleviating the legal needs of those unable to afford legal services, thereby extending the opportunity for justice to all.

### C. Documenting Need: *The Spangenberg Report of 1993*

In the same year that then-Associate Justice Moon became Chief Justice of the Hawai'i Supreme Court, a report entitled "Assessment of Civil Needs of Low and Moderate Income People in Hawaii" was completed and submitted by The Spangenberg Group, a legal research firm based in Massachusetts. Commissioned in 1991 by a consortium of law-related organizations, including the Hawai'i Justice Foundation, the Hawai'i State Bar Association, the Legal Aid Society of Hawai'i, and Hawai'i Lawyers Care, the Report stated what everyone suspected but could never articulate with specificity: that poor people rarely get their civil legal needs met and that many people who work and regularly earn a paycheck cannot purchase legal services and thus go without.<sup>64</sup>

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twenty-two. Cf. Minutes of the Hawai'i State Bar Association Board of Directors 2 (Oct. 22, 2009) (reporting the presentation of VLSH Executive Director Moya Gray, who described how the VLSH staff had been halved from twenty-two to eleven members).

<sup>61</sup> *Volunteer Legal Services Newsletter*, *supra* note 57, at 25.

<sup>62</sup> Judy Sobin, *Executive Director's Report (Hawai'i Lawyers Care Volunteer Legal Services)*, HAW. B.J., DEC. 1997, at 17, 17 [hereinafter Sobin, 1997 Report]; Judy Sobin, *Executive Director's Report (Hawai'i Lawyers Care Volunteer Legal Services)*, HAW. B.J., June 1998, at 25, 27-28, 31.

<sup>63</sup> Alan Van Etten, *Perspectives*, HAW. B.J., Dec. 1997, at 4, 4.

<sup>64</sup> THE SPANGENBERG REPORT, *supra* note 23, at 4, 12.

More specifically, the Report found that "only 9.6% of the low-income families in Hawai'i receive legal assistance for their civil legal problems."<sup>65</sup> The Report noted that this was lower than figures culled from phone surveys in other states.<sup>66</sup> In addition, it determined that "gap group respondents"<sup>67</sup> received legal assistance only 23.6% of the time when a legal problem arose."<sup>68</sup>

The Report documented the inability of existing legal resources to stem this crush of need. It recounted the significant funding reductions that caused the Legal Aid Society of Hawai'i to enter a period of steep retrenchment, attorney departures, and diminished services.<sup>69</sup> It pointed to the wait lists that met many who appeared at the door of legal services providers across the community; in some cases, the size of waiting lists discouraged many prospective clients from taking a place in the line.<sup>70</sup> Moreover, it observed that when indigent individuals managed to see a legal professional, they often received only brief services or advice instead of full representation.<sup>71</sup> The Report also described the perception of judges that the surge of pro bono energy had not translated into a notable increase in pro bono representation, as evidenced by the large number of parties appearing unrepresented because of high legal fees.<sup>72</sup>

The Report observed that the neighbor islands and outlying O'ahu communities were particularly disadvantaged,<sup>73</sup> and that significant barriers to access to justice existed: transportation, language and cultural

<sup>65</sup> *Id.* at 12.

<sup>66</sup> *Id.* Prior to its study of Hawai'i's civil legal needs, The Spangenberg Group had completed civil legal needs studies for New York, Massachusetts, and Illinois. See Robert L. Spangenberg—Biography, THE SPANGENBERG GROUP, [http://dnewhouse.com/TSG/rls\\_bio.html](http://dnewhouse.com/TSG/rls_bio.html) (last visited Feb. 5, 2011).

<sup>67</sup> THE SPANGENBERG REPORT, *supra* note 23, at 132.

<sup>68</sup> The Report used this term to refer to "[i]ndividuals whose incomes fall between 125% and 250% of the federal poverty level." *Id.* at 117. Referred to as the "near-poor," these individuals had incomes "high enough to disqualify them from most federal and state poverty programs . . . yet are too low to enable them to afford . . . private legal representation." *Id.*

<sup>69</sup> *Id.* at ii, 167-70.

<sup>70</sup> *Id.* at 167.

<sup>71</sup> *Id.* at 167-68. The Report noted that Hawai'i was not unique in the limitations placed on services provided. See *id.*

<sup>72</sup> *Id.* at 216-17.

<sup>73</sup> See THE SPANGENBERG REPORT, *supra* note 23, at 22 (finding that LAS did not have enough neighborhood or outreach offices conveniently located for low-income families and individuals); see *id.* at 217 (noting that on the neighbor islands, pro bono representation seemed non-existent); but see *id.* (describing another study in 1991, which found that neighbor island attorneys participated in pro bono civil legal representation more often than O'ahu attorneys did).

differences, and lack of knowledge about legal rights, the legal system, and available legal resources.<sup>74</sup> Remarkably, only 13.5% of low-income individuals knew that free civil legal services existed in their community.<sup>75</sup>

From these findings, the Report made several recommendations: (1) form an implementation committee to develop a comprehensive plan for improving the delivery of legal services to the poor; (2) obtain more funds to improve the delivery of legal services to low-income and gap groups; (3) aim to provide more comprehensive services to clients; (4) develop a plan to perform outreach, thus removing unnecessary barriers to services; and (5) redouble efforts to raise pro bono activities among private attorneys.<sup>76</sup>

Although criticized by some,<sup>77</sup> the Report made an impact. For many years after its completion, its findings and conclusions punctuated many articles and appeals for finding workable solutions to enhance access to justice.<sup>78</sup> No longer was the problem of access to justice premised on anecdotal information only. Advocates were now armed with empirical information with which to request more resources in the name of achieving the national ideal of "equal justice for all." It provided a baseline for measuring progress, and its key recommendations ultimately produced or supported several tangible results: salaries for Legal Aid attorneys increased,<sup>79</sup> private efforts to augment resources for legal services were

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<sup>74</sup> *Id.* at 213-15.

<sup>75</sup> *Id.* at 215.

<sup>76</sup> *Id.* at 17-21.

<sup>77</sup> In its acknowledgement in the inside cover of its report, the Spangenberg Group noted that at least \$90,000 had been paid by the Hawai'i Bar Foundation, the Hawai'i State Bar Association, and the Legal Aid Society of Hawai'i, with the Foundation being by far the largest contributor at \$63,500. Some thought that the price was too high for findings that matched what many suspected, if not already knew. Others pointed out how the most frequently experienced legal problem—issues relating to household utilities—as experienced and identified by respondents did not match what legal services providers commonly saw in their offices. This finding may have arisen from when the fact-finding part of the study occurred: during the wake of the destructive Hurricane Iniki, which passed through the islands on September 11, 1992.

<sup>78</sup> See, e.g., Sherry Broder, *Bar President's Report: Meeting Hawai'i's Unmet Legal Needs*, HAW. B.J., Nov. 1993, at 4, 4; Bill Hoshijo, *Public Interest Law—What Is It We Are Fighting For?*, HAW. B.J., May 1995, at 4, 4; Ellen Godbey Carson, *What We Can Do About the Legal Services Crisis*, HAW. B.J., Apr. 1996, at 4, 4; *The Gap Group Program: A Collaboration That Works*, HAW. B.J., Sept. 1997, at 27, 27; Sobin, *1997 Report*, supra note 62, at 17; Gabrielle Hammond, *A Vision for Justice*, HAW. B.J., May 1999, at 24, 24; David Forman, *Unbundled Legal Services*, HAW. B.J., Aug. 2001, at 20, 23; Adler, *Lawyers and Philanthropy*, supra note 26, at 12, 16; HAWAII 2007 LEGAL NEEDS ASSESSMENT, supra note 40, at II-13.

<sup>79</sup> The author began his career as a Legal Aid attorney in Wai'anae. As a managing attorney in 1985, he received an annual salary of about \$17,000. Today, full-time staff attorneys at Legal Aid start in the \$40,000 per year range. HAWAII 2007 LEGAL NEEDS

buoyed by the Report,<sup>80</sup> outreach efforts were launched,<sup>81</sup> better planning was undertaken by legal services providers individually and sometimes collectively,<sup>82</sup> and efforts to reduce barriers to access to justice received a boost. Until 2007, when a new needs assessment report was completed, the Spangenberg Report remained an important part of the conversation on access to justice and helped to fuel an Access to Justice Movement already gaining traction in the 1990s.

*D. The Hawai'i Citizens Justice Conference: A Call for Proactive Reform*

With the twenty-first century just around the corner, Chief Justice Moon partnered with the Hawai'i State Bar Association to convene a one-day Citizens Justice Conference late in 1996.<sup>83</sup> Working for several months prior to the conference date, the steering committee developed five task forces to think about, debate, and decide on realistic and concrete actions to improve Hawai'i's justice system. Each task force focused on one of the following: (1) economic access, (2) appropriate dispute resolution, (3) fairness and equality, (4) user-friendly justice, and (5) life without a justice system.<sup>84</sup>

ASSESSMENT, *supra* note 40, at II-37 (stating that attorneys with legal services programs receive on average \$40,000 to \$42,000 annually).

<sup>80</sup> For example, the Hawai'i State Bar Association annually holds a gala dinner to benefit an Access to Justice partner. Over the years, beneficiaries of these efforts included the Hawai'i Justice Foundation, the HSBA Public Services Fund, Legal Aid Society of Hawai'i, Volunteer Legal Services of Hawai'i, the Domestic Violence Action Center (formerly known as Domestic Violence Clearinghouse and Legal Hotline), Na Loio No Na Kanaka, the Children's Advocacy Center of O'ahu, and others. Private attorneys often spearhead capital campaigns for these organizations to great effect.

<sup>81</sup> The growth of community-based clinics, culturally relevant educational outreach, regularly scheduled telephone hotlines, and pro se manuals, pamphlets, and court forms were accelerated during this period. *See, e.g., HSBA Mission Statement*, HAW. B.J., Feb. 1995, at 40, 44-45. Following the Report, the development of an informational center at the flagship Legal Aid office, *see generally* Hammond, *supra* note 78, at 24, and the establishment of self-help centers at the Honolulu district and circuit courts, *see Court-Based Assistance Program*, *infra* note 86, also occurred.

<sup>82</sup> *Cf.* Victor Geminiani, *We Can Do Better*, HAW. B.J., Dec. 1997, at 9, 10 (describing both "unnecessary walls that have impeded communications, effectiveness and collaboration [among legal services providers]" and the incremental but specific progress in achieving "[i]nterdependence . . . along with more sophisticated and connected delivery systems which build upon each program's strengths and central mission").

<sup>83</sup> *See* Ellen Godbey Carson & Alan Van Etten, *Hawai'i Citizens Justice Conference—A Call for Proactive Reforms*, HAW. B.J., Mar. 1997, at 6, 8.

<sup>84</sup> *Id.* at 7.

After sifting through hundreds of ideas, the participants, consisting of more than 300 individuals assigned to one of the five task forces, settled on six specific action items: (1) educating youth on alternative dispute resolution (ADR), (2) creating a self-help center, (3) expanding the use of ADR, (4) simplifying court forms and procedures, (5) creating a multi-media educational campaign, and (6) creating a court interpreter program.<sup>85</sup>

Although none specifically targeted impoverished communities or individuals, each action item championed a judicial system that reached out to the community and supported all who sought its assistance. Some ideas—like developing user-friendly court forms, simplifying court procedures, and creating a self-help center—helped unrepresented individuals navigate through an otherwise complex and intimidating system.

Others, like the promotion of ADR, made justice easier and less expensive to attain by promoting vehicles of dispute resolution that generally cost less yet hold the promise of healing and empowerment. Still others contemplated the packaging and dissemination of information in ways that effectively touched current or prospective court users who would otherwise remain uninformed or unengaged, often to their peril.

The impact of this conference was evident in the concrete actions that ultimately occurred. The years that followed witnessed the creation of self-help assistance facilities,<sup>86</sup> the implementation of a certification program for court interpreters,<sup>87</sup> changes in court rules and practices regarding the mandated use of alternative dispute resolution techniques,<sup>88</sup>

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<sup>85</sup> *Id.* at 10-11.

<sup>86</sup> See *Judiciary Launches Comprehensive Court-Based Assistance Program*, HAW. B.J., Sept. 2000, at 16, 16 [hereinafter *Court-Based Assistance Program*] (announcing the start of the Ho'okele Court Navigation Project which featured four court-based assistance stations in Honolulu). According to Chief Justice Moon, this pilot project offered to court users "problem identification assistance at the courthouse door[,] . . . opportunities for self help and self learning, and . . . personalized assistance when needed." *Id.*

<sup>87</sup> Even before the Citizens Justice Conference, planning was underway to create a court interpreters certification program. See Daniel Heely, *Equal Access to the Courts*, HAW. B.J., Apr. 1995, at 18, 18 (highlighting the appointment of the Supreme Court Committee on the Certification of Court Interpreters). The efforts of this Committee, staffed by the Judiciary's Office on Access and Equality to the Courts, ultimately resulted in the adoption of a Court Interpreters Certification Program which seeks to ensure professional competence and ethical conduct among individuals who provide interpretation services in Hawai'i's court. See *Becoming a Registered Court Interpreter*, HAW. STATE JUDICIARY, [http://www.courts.state.hi.us/services/court\\_interpreting/becoming\\_a\\_court\\_interpreter.html](http://www.courts.state.hi.us/services/court_interpreting/becoming_a_court_interpreter.html) (last visited Feb. 5, 2011).

<sup>88</sup> See James Kawachika, *ADR Pilot Project Begins*, HAW. B.J., Mar. 1998, at 4 (describing the variety of ADR-related responses that bar members could undertake to fulfill the ADR recommendations from the Citizens Justice Conference); Elizabeth Kent & Lou Chang, *ADR in Hawai'i's Courts*, HAW. B.J., Nov. 2008, at 6; cf. Coralie Chun Matayoshi,



the many school-based projects to teach peaceable dispute resolution,<sup>89</sup> and the sometimes vexing efforts to provide simplified court forms.<sup>90</sup> Although the six action items were intended to benefit everyone and not just the poor, their strong underlying "access" emphasis complemented, if not enhanced, the Access to Justice Movement. Indeed, many in the legal services provider community were called to contribute, if not lead, the efforts to plan and implement some of the action items. They were, of course, supportive.<sup>91</sup> Access for all meant access to their clients, and in fact, some had already created effective prototypes originally developed for their clients,<sup>92</sup> which could be adjusted for the larger community. Because all of these action items entailed little or no cost to court users, they were particularly useful to individuals of limited means and, by extension, those who represented them.

Although almost all of these efforts continue to require monitoring, refinement, and even re-creation, their emergence during Chief Justice Moon's tenure introduced important pieces to the access to justice puzzle. Some, like alternative dispute resolution awareness, have become so institutionalized that new generations of legal professionals consider them normative. Others, like the breaking down of language and cultural barriers to access to justice, remain works-in-progress that still need community

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*March is ADR Month*, HAW. B.J., Mar. 2001, at 4, 4-5 (pointing out that "half of the recommendations emanating from our 1996 Hawai'i Citizens Justice Conference involved ADR").

<sup>89</sup> *E.g.*, Van Etten, *supra* note 63, at 4 (describing efforts of the Judiciary's Center for ADR and the Neighborhood Justice Center to "develop a phenomenally successful program" in which attorney volunteers taught students at twenty-five elementary, intermediate, and high schools about how to resolve disputes peacefully); Matayoshi, *supra* note 88, at 4 (announcing the 2001 Statewide Peer Mediation Conference, which was designed and conducted by middle and high school student mediators); *see generally* Alan Van Etten, *Lights, Camera, Action! ADR Campaign Rolls Out*, HAW. B.J., Oct. 1997, at 4, 4 (describing both the School Mediator-Mentor Program and Peer Mediation Youth Conference).

<sup>90</sup> *See, e.g.*, *Court Briefs: Family Court Pro Se Packets*, HAW. B.J., Nov. 1998, at 20.

<sup>91</sup> *E.g.*, Hammond, *supra* note 78, at 26 (explaining how after the Citizens Civil Justice Conference, LAS and HLC staff partnered with the state judiciary and the private bar to create simplified family court and district court forms).

<sup>92</sup> For example, Legal Aid Society of Hawai'i already developed a complement of informational brochures for areas of the law that affected their clients. *See History of Legal Aid*, LEGAL AID SOC'Y OF HAW., <http://www.legalaidhawaii.org/HISTORY.htm> (last visited Feb. 5, 2011) (stating that in 1991, the Legal Aid Society of Hawai'i "began developing educational brochures on common legal issues facing the poverty community including AFDC, bankruptcy, divorce, fair hearings, food stamps, living wills, Medicaid, etc."). Because financially needy individuals often experience the same legal problems encountered by the community at large, it was not a stretch to adjust these materials to assist a broader audience.

awareness, acceptance, and support.<sup>93</sup> Yet, each piece required a heroic though often unheralded undertaking of effort, time, and resources to launch and develop. These accomplishments invariably required collaboration, networking, and assembled energy to leverage the resources of different groups and individuals to ensure that these projects, big or small, got done. The landscape of the Access to Justice Movement was and remains defined not only by the organizations and completed projects that dot it; it is creviced by the personal and professional relationships that swirl into being when people and groups come from different parts of the community to contribute toward shaping ideas into tangible results. Sometimes these relationships have unexpectedly emerged from conflict as seen in the section below.

### III. GROWING PAINS LEAD TO GROWTH

As described above, the 1990s witnessed a period of energy, momentum, and maturity for the Access to Justice Movement. However, growth meant greater consumption, and without a concomitant expansion of resources, competition for existing funds was certain to follow. Managing the competition became an obvious challenge for Hawai'i's legal services providers even before the decade ended. When competition turned to open conflict, Hawai'i's maturing Access to Justice Movement threatened to stall. The most public clash occurred between the burgeoning Volunteer Legal Services of Hawai'i (formerly known as HLC and hereinafter VLSH) and a reinvigorated Legal Aid Society of Hawai'i (LAS).

The trajectories of VLSH and LAS made a collision predictable. VLSH was poised to vault from its modest beginnings to lead a growing pro bono charge. The hiring of an energetic and entrepreneurial executive director in 1993 primed the pump for its growth.<sup>94</sup> Although originally conceived to recruit pro bono attorneys to represent individual clients whom LAS could

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<sup>93</sup> For example, this particular barrier remains the focus of the Access to Justice Commission Committee on Overcoming Barriers to Access to Justice. To leverage the resources of all law-related entities that work on language and cultural access, the Committee convened a "roundtable" of these groups to work collaboratively toward reducing barriers experienced by individuals with limited English proficiency or who otherwise find the courts culturally distant. Martin Luna, *Roundtable Meeting on Linguistic and Cultural Access to Justice*, HAW. B.J., June 2010, at 24. One recent result of the roundtable's effort is an ongoing series of tips for attorneys working with non-English speakers. *Gobbledygook and Gaffes: Tips on Working with Non-English Speakers*, HAW. B.J., Dec. 2010, at 28.

<sup>94</sup> Val Tavai, *Hawai'i Lawyers Care: HLC Names New Executive Director*, HAW. B.J., Apr. 1993, at 32, 32.

no longer serve due to dwindling resources,<sup>95</sup> VLSH was prepared to grow beyond the traditional one-on-one matching of client and attorney and to identify other pro bono opportunities that appealed to what attorneys wanted and could do.

Part of this expanded vision was to identify limited direct legal service gaps in the community and fill them through the use of volunteer attorneys and paid staff.<sup>96</sup> At the outset, this took the form of legal outreach clinics where pro bono attorneys provided advice and counsel and performed brief services for financially eligible individuals. To implement this and other similar projects, VLSH competed for grants that were not from its traditional sources but nevertheless supported its new vision. It succeeded for several years as evidenced by an expanded paid staff, the 1999 opening of a newly built suite of offices, and a presence throughout the state.<sup>97</sup> By year 2000, it had a new name to better brand what it did.

At the same time, LAS sought to right its course after several difficult years during which its survival seemed tenuous. To accomplish this, it hired an executive director whose national reputation among legal services providers reflected his experience, abilities, vision, and past successes.<sup>98</sup> Under his leadership, LAS underwent a change in its funding, departing from its heavy reliance on state and federal government sources and pursuing smaller but available amounts of public and private funds.<sup>99</sup> The

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<sup>95</sup> At the time of HLC's founding, LAS's capacity to serve clients had dropped by fifty clients per month. The intent was for a pro bono referral service to identify attorneys willing to accept some of these clients, thereby lessening the adverse impact of LAS's financial travails. The original name of the project was "Hawai'i Pro Bono Legal Referral Project." David Frank, *Free Legal Referral Wins ABA Praise*, HONOLULU ADVERTISER, July 11, 1981, at A4.

<sup>96</sup> BARTSCH, CHONG & DODD, *supra* note 56, at 1.

<sup>97</sup> See Judy Sobin, *Volunteer Legal Services Hawai'i: Executive Director's Report: We Have a New Name and Soon, a New Office*, HAW. B.J., Sept. 1999, at 25, 25-26.

<sup>98</sup> See *The Staff of Lawyers for Equal Justice*, LAWYERS FOR EQUAL JUSTICE, <http://www.lejhawaii.org/staff/victor.html> (last visited Feb. 5, 2011) (listing Victor Geminiani's long and distinguished record of service and leadership across the country). Geminiani ultimately left the Legal Aid Society of Hawai'i to direct the Legal Aid Foundation of Los Angeles before returning to Hawai'i to head Lawyers for Equal Justice, a small public interest law firm which has garnered its share of impressive accomplishments in its short history. See generally LAWYERS FOR EQUAL JUSTICE, <http://lejhawaii.org/index.html> (last visited Apr. 4, 2011).

<sup>99</sup> See *History of Legal Aid*, LEGAL AID SOC'Y OF HAW., <http://www.legalaidhawaii.org/HISTORY.htm> (last visited Feb. 5, 2011) (describing the GA-SSI program with the Hawai'i Department of Human Services and the state funding that came with it, the creation of LAS's Affordable Lawyers Program which continues to provide legal services to "gap group" individuals who pay a reduced fee, the Domestic Violence Legal Services Project which was funded with Maui County monies, the arrival of

influx of new monies reinvigorated LAS and enabled it to think about new directions and initiatives, all in the name of bringing justice to the poor.<sup>100</sup> Like VLSH, it moved into new facilities that it boldly purchased and refurbished, significantly bolstered its staff, and undertook new ventures like the creation of its Center for Equal Justice.<sup>101</sup> It understood that direct services to the poor meant far more than assigning a staff attorney to represent each eligible client with a meritorious claim. "More" meant empowering those who could help themselves through effective triage accompanied by a mix of informational materials, individualized advice and counsel, and brief services.<sup>102</sup>

By staking its growth on new funding sources, both organizations began to look vaguely alike even though their institutional foci—direct services for LAS and pro bono for VLSH—were different. An independent evolution of VLSH's operations noted the overlap between the two organizations as early as 1996.<sup>103</sup> In 1998, the obvious overlap prompted the Hawai'i Justice Foundation (HJF) to convene with the leaders from VLSH and LAS, who were asked to explain how their "approaches do or don't overlap."<sup>104</sup>

The perception was understandable. As LAS eased away from traditional litigation work into activities that required fewer resources per case, its work began to bear some similarities to the counsel and brief service clinics that VLSH was establishing in neighborhoods. Prompted in part by the Citizens Justice Conference and the Spangenberg Report, both performed community outreach and developed educational components to their services. This morphing became even more pronounced as VLSH entered into direct client services<sup>105</sup> and LAS added a pro bono component to its firm.<sup>106</sup>

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AmeriCorps volunteers funded by the Corporation for National and Community Services, and the founding of the Medicare Advocacy Project based on a grant from the Keauhou Rehabilitation and Health Care Advocacy Council).

<sup>100</sup> *See id.*

<sup>101</sup> *See id.* (describing Legal Aid's move to the Friend Building in downtown Honolulu in February of 1999); *see generally* Hammond, *supra* note 78, at 25-27 (describing the Center for Equal Justice housed at the Honolulu Legal Aid office to offer a variety of user-friendly services that help unrepresented court users to identify and explore their legal options).

<sup>102</sup> Geminiani, *supra* note 82, at 10-13.

<sup>103</sup> BARTSCH, CHONG & DODD, *supra* note 56, at 4 (noting the start of an overlap between HLC and other legal services providers).

<sup>104</sup> Letter from Peter S. Adler, Exec. Dir., Haw. Justice Found., to Victor Geminiani, Exec. Dir., Legal Aid Soc'y of Haw., and Judy Sobin, Exec. Dir., Haw. Lawyers Care (Mar. 13, 1998) (on file with author).

<sup>105</sup> For example, VLSH created its Na Keiki Law Center which provided direct representation of minor children in a variety of cases involving their legal needs and rights. *See generally* Judy Sobin & Annabel Murray, *Protecting and Supporting Children: The*

Soon "overlap" turned into open competition, and dismayed third parties tried to intervene. In her quarterly newsletter published in the Hawai'i Bar Journal, the executive director for VLSH candidly described the antagonism between the two major public interest law organizations in the state:

For those of you who may not know it, over the past year or two, as the economy of Hawaii worsened, so did the relationship between HLC and LASH. With revenues in short supply, antagonisms frequently flared whenever discussions arose about who was entitled to the limited dollars available to support operations.<sup>107</sup>

She went on to point out that the HJF threatened to withdraw its funding from both organizations "unless the two organizations began working together."<sup>108</sup> With this "push" by HJF leadership and the help of a facilitator, VLSH and LAS developed a Memorandum of Understanding to keep communication lines open and respect agreed-upon zones of responsibility and expertise.<sup>109</sup> Although this understanding was not consistently followed and disagreements ensued, the Memorandum served as a visible and much needed reminder of the call to clients' needs that has always tied the two organizations at the hip. While this tie has sometimes tensed over the years as one organization pulls against the other, a residue of common cause always manages to settle them, returning each to the hard work they do best when partnering as they should.

Sometimes, an outside threat galvanizes estranged partners and forges the effective collaboration for which they seem destined. Such a threat occurred in late 2005 when the state bar proposed an amendment to Rule 6.1 of the Hawai'i Rules of Professional Conduct. The proposed amendment would establish the mandatory annual reporting of pro bono hours by each actively licensed attorney.<sup>110</sup> In addition, it envisioned replacing the aspirational fifty hours of pro bono work per year with an indeterminate

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*Na Keiki Law Center*, HAW. B.J., Mar. 1999, at 26, 26-27. Also, through the use of AmeriCorps and other grants, VLSH embarked on an ambitious program to address domestic violence through the use of attorney and non-attorney advocates. See *Volunteer Legal Servs. Haw., Come Work With Us*, HAW. B.J., Mar. 2000, at 26, 26-27 (describing VLSH's AmeriCorps Center to End Violence and Community Legal Centers).

<sup>106</sup> Developing a model of pro bono delivery premised on having its legal staff support the work of volunteers, LAS embarked on its Partnership in Pro Bono program in 2004. Geminiani, *supra* note 42, at 11-12.

<sup>107</sup> Judy Sobin, *Executive Director's Report*, HAW. B.J., Mar. 1999, at 25, 25.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *HSBA Happenings: Call For Member Comments*, HAW. B.J., Apr. 2005, at 16, 17; see also Jeff Portnoy, *Perspectives: President's Message*, HAW. B.J., Aug. 2007, at 14, 14 (briefly recounting the 2005 effort to adopt a mandatory reporting of pro bono hours while expanding the definition of pro bono activities).

obligation that was “reasonable.”<sup>111</sup> Further, it would expand the activities that qualified as an attorney’s pro bono work. Under this proposal, community and non-profit services, whether related to law or not, could be reported as satisfying one’s pro bono obligation.<sup>112</sup> In a nutshell, the bar was willing to offer mandatory reporting for a price: eliminating the fifty hour per year aspirational goal and diluting the expectation that pro bono work should tap an attorney’s legal skills and expertise.

Quickly, the leadership of both VLSH and LAS, in consultation with other public interest law firms, mobilized to defeat the measure. They submitted pointed written arguments to the state bar and, in January 2006, met with all five justices of the Hawai’i Supreme Court to express their strong and unified reservations.<sup>113</sup> Together, they created a firestorm that stalled the bar directors’ decision on the proposal and ultimately persuaded the justices to signal their displeasure with it. As a result, the proposed amendment to Rule 6.1 quietly faded.<sup>114</sup>

The goodwill and success of this effort generated more conversation about possible collaborations, and in the days surrounding the Hawai’i Supreme Court’s rejection of the proposed Rule 6.1 amendments, an idea emerged to have the two groups spearhead an effort to update the legal needs assessment performed by the Spangenberg Group thirteen years before.<sup>115</sup> This assessment would lay the groundwork for a Community-Wide Action Plan to increase access to justice.<sup>116</sup> By the year’s end, the nascent dialogue

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<sup>111</sup> See E-mail from Richard Turbin, President, Haw. State Bar Ass’n, to Members of the HSBA (Nov. 9, 2005, 14:49 HST) (on file with author) (explaining proposed changes to Rule 6.1 and 17(d) of the Hawai’i Rules of Professional Conduct).

<sup>112</sup> *Id.*

<sup>113</sup> See E-Mail from David J. Reber, LAS Bd. President, to Members of the LAS Bd. (Dec. 27, 2005, 16:44 HST) (on file with author) (describing meetings with VLSH leadership and pending January 12, 2006 conference with the five justices); E-mail from David J. Reber, LAS Bd. President, to George Zweibel, LAS Bd. Dir., Nalani Fujimori, LAS Interim Exec. Dir., and author, LAS Bd. Dir. (Jan. 12, 2006, 17:09 HST) (on file with author) (describing “good airing of views” with the justices).

<sup>114</sup> See E-mail from David J. Reber, LAS Bd. President, to Nalani Fujimori, LAS Interim Exec. Dir., author, LAS Bd. Dir., George Zweibel, LAS Bd. Dir. (Feb. 3, 2006, 17:40 HST) (on file with author) (informing recipients of the Supreme Court’s decision not to adopt mandatory reporting or change Rule 6.1). The opportunity could not have come at a better time. The executive directors for both organizations hired in the 1990s had departed, and new leadership was either in place or being hired. It was a time for starting anew.

<sup>115</sup> E-mail from George Zweibel, LAS Bd. Dir., to author, LAS Bd. Dir., David J. Reber, LAS Bd. President, and Nalani Fujimori, LAS Interim Exec. Dir. (Feb. 1, 2006, 13:27 HST) (on file with author) (discussing, as part of a larger conversation, projects and ideas that LAS and VLSH could work on together).

<sup>116</sup> Letter from David J. Reber, LAS Bd. President, Jay Kimura, VLSH Bd. President, M. Nalani Fujimori, LAS Interim Exec. Dir., Moya Gray, VLSH Exec. Dir., Wayne Parsons,

between the two organizations spread into the formation of an Access to Justice Hui<sup>117</sup> consisting of leaders from the state's major public interest law firms, the judiciary, the bar, the law school, and the Hawai'i Justice Foundation.<sup>118</sup> With funds from the Foundation and the Hawai'i State Bar Association, the Hui proceeded to steer the project<sup>119</sup> to completion. By November 2007, Hawai'i had a new Legal Needs Assessment, which, in turn, guided the creation of an action plan for improving access to justice in the state. This plan emerged with the tacit approval of Chief Justice Moon, who periodically met with the Hui leadership for updates and stood ready to publicly support the Hui's work.<sup>120</sup>

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HSBA President, and Lyn Flanigan, HSBA Exec. Dir., to Robert LeClair, Exec. Dir., Haw. Justice Found. (May 1, 2006) (on file with author). This letter, which sought funding from the HJF, was the product of many informal conversations on joining forces to create the assessment and action plan. Before finalizing the letter, LAS and VLSH invited the Hawai'i State Bar Association to become an active partner. Thankfully, it agreed.

<sup>117</sup> Jo Kim, *Access to Justice Hui: Who, What, & Why*, HAW. B.J., Aug. 2007, at 24, 24; HAWAI'I 2007 LEGAL NEEDS ASSESSMENT, *supra* note 40, at II-11. The name was coined by long-time access to justice advocate Jo Kim, who was then co-chair of the HSBA Committee on Delivery of Legal Services to the Public.

<sup>118</sup> *Id.*

<sup>119</sup> No huge project, like the one undertaken by the Hui, can be accomplished without at least one person to advance the work and sustain the project's vision. In this case, Nalani Fujimori, then Deputy Director for LAS, was that person, and in 2008, she received the HSBA's prestigious C. Frederick Schutte Award to celebrate her exemplary leadership of the Hui. *HSBA 2008 Award Winners*, HAW. B.J., Nov. 2008, at 22, 22.

<sup>120</sup> Concerned about the tensions between LAS and VLSH, Chief Justice Moon agreed to meet their leadership and encourage dialogue and collaboration in the early days surrounding the Hawai'i Supreme Court's rejection of the proposed Rule 6.1 amendments. E-mail from David J. Reber, *supra* note 114 (describing a lunch meeting between the chief justice and the board presidents of both LAS and VLSH). Chief Justice Moon later met with the Hui leadership on November 3, 2006 to receive an update at the offices of Goodwill Anderson Quinn & Stifel. E-mail from Nalani Fujimori, LAS Interim Exec. Dir., to George Zweibel, LAS Bd. Dir., Jo Kim, Co-Chair of HSBA Comm. on Delivery of Legal Servs. to the Public, Lyn Flanigan, HSBA Exec. Dir. (Oct. 12, 2006, 10:16 HST) (on file with author). After the first draft of the Legal Needs Assessment was completed, a two-day meeting was scheduled to discuss the draft and decide on the steps to be taken to appropriately respond to the assessment. This meeting, scheduled at the law school on October 19-20, 2007, was to be keynoted by the Chief Justice. E-mail from Nalani Fujimori, LAS Deputy Dir., to Members of the Access to Justice Hui (Sept. 12, 2007, 17:08 HST) (on file with author). However, a sudden change in travel plans required him to have Justice Steven Levinson speak in his place. *Id.* E-mail from Nalani Fujimori, LAS Deputy Dir., to Members of the Access to Justice Hui (Sept. 13, 2007, 11:00 HST) (on file with author).

#### IV. THE COMMUNITY-WIDE ACTION PLAN AND THE BIRTH OF THE HAWAI'I STATE COMMISSION ON ACCESS TO JUSTICE

The 2007 Assessment of Civil Needs and Barriers of Low and Moderate Income People in Hawai'i (Hawai'i 2007 Legal Needs Assessment) provided no surprises, but like its predecessor, the Spangenberg Report, it showed how elusive the "equal justice for all" ideal remained. In 2007, fourteen years after the Spangenberg Report, only about twenty-three percent of low- or moderate-income individuals had their civil legal needs met.<sup>121</sup> This percentage was only marginally better than what the Spangenberg Group found in 1993. The top areas of civil legal needs remained similar: family law including domestic violence, housing, and consumer problems.<sup>122</sup> Of these, consumer debt represented the area where legal resources were least available.<sup>123</sup>

The Hawai'i 2007 Legal Needs Assessment highlighted several details that underscored the depth of the unmet legal needs in Hawai'i: (1) approximately one in four people in Hawai'i lived below 200% of the federal poverty level, representing a 23.6% increase from 1989;<sup>124</sup> (2) the population of those under 125% of the federal poverty level grew 28.16% since 1989;<sup>125</sup> (3) legal services providers turned away approximately 67% of those who contacted them for help;<sup>126</sup> (4) Hawai'i's ratio of attorneys to general population was 1 to 361;<sup>127</sup> and (5) in stark comparison, the ratio of legal services attorneys to individuals living on low to moderate incomes was a stunning 1 to 4,402.<sup>128</sup> Sharpening the glare were news reports, following the release of the 2007 report, that described how state funding for the Legal Aid Society of Hawai'i dropped from \$1.47 million in 1992 to

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<sup>121</sup> HAWAI'I 2007 LEGAL NEEDS ASSESSMENT, *supra* note 40, at II-25.

<sup>122</sup> *Id.* at II-26.

<sup>123</sup> *Id.* at II-8, II-25 to II-26. Although housing and family law-related issues represented the larger areas of unmet need, problems related to consumer debt was where legal services providers most often did not provide assistance.

<sup>124</sup> *Id.* at II-7, II-17. Two hundred percent of poverty is the cut-off point for eligibility under VLSH guidelines.

<sup>125</sup> *Id.* at II-17. One hundred twenty-five percent of poverty is the cut-off point for eligibility under LAS guidelines.

<sup>126</sup> *Id.* at II-8.

<sup>127</sup> *Id.* at II-32.

<sup>128</sup> *Id.*



\$810,000 in 2008, a 45% decrease.<sup>129</sup> Moreover, since 1980, federal funding for Legal Aid dropped by one-half when adjusted for inflation.<sup>130</sup>

Clearly much work remained to be done, but the Hui was ready to roll up its sleeves. It was always the Hui's intent to use the Hawai'i 2007 Legal Needs Assessment as a springboard to action, and at a two-day meeting at the William S. Richardson School of Law in October 2007, Hui members and others evaluated the Assessment's findings and formulated an agenda for action in response.<sup>131</sup> After a period of collective brainstorming, the Hui members formulated ten suggestions:<sup>132</sup>

1. Create an Access to Justice Commission;<sup>133</sup>
2. Increase Funding to Support Delivery of Services;<sup>134</sup>
3. Develop a Culture that Values Pro Bono;<sup>135</sup>
4. Establish Recognition of Right to Counsel in Certain Civil Cases;<sup>136</sup>

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<sup>129</sup> Susan Essoyan, *Family Needs Legal Help to Save Home*, HONOLULU STAR-BULLETIN, Apr. 20, 2008, at A10, available at <http://archives.starbulletin.com/2008/04/20/news/story02.html>.

<sup>130</sup> *Id.*

<sup>131</sup> See E-mail from Nalani Fujimori, Access to Justice Hui Coordinator, to Members of the Access to Justice Hui (Oct. 18, 2007, 15:35 HST) (on file with author) (setting forth agenda and logistics).

<sup>132</sup> The Hui members agreed that 2010 would be the target year for undertaking all action items, which set off a battle cry of "Ten in 2010."

<sup>133</sup> HAWAI'I 2007 LEGAL NEEDS ASSESSMENT, *supra* note 40, at I-3. This action item envisioned having the Hawai'i Supreme Court establish a commission charged with leading and overseeing efforts to increase funding and improve the delivery of legal services to the poor. It would provide an institutional presence to ensure that momentum, generated first by the Hui, would continue into the future. *Id.* at B-3 to B-6.

<sup>134</sup> *Id.* at I-4. This action item reflected the never-ending struggle not only to adequately fund legal services programs but to find ways to ensure the stability of funding so that better planning and decision-making could occur. It would discourage the damaging competition among organizations that needed to constantly position themselves for funding.

Under this action item, participants also discussed how to get financial institutions to provide the best interest rates on IOLTA funds; this was in the wake of severe cuts in general interest rates, which turned Hawai'i's IOLTA funding into a shadow of what it had been in the 1990s. Discussants also strategized on lobbying the Legislature for higher court filing fee surcharges which would be funneled into the Judiciary's Indigent Legal Assistance Fund (ILAF), which since 1996 was distributed to organizations serving the legal needs of the poor. *Id.* at B-6 to B-9.

<sup>135</sup> *Id.* at I-5. Like funding, this action item affirmed the continuing need to fight the good fight. Finding ways to keeping "pro bono" as a core value among all legal professionals was deemed fundamental. The specific action items were hardly new, but for good reason. As in other states, melting the resistance of attorneys to legal pro bono work is a long distance run, which requires persistence and patience. At the meeting, no one doubted the need to "keep at it" because the alternative—cutting back or giving up—was unacceptable. *Id.* at B-9 to B-12.

<sup>136</sup> *Id.* at I-6. Across the country, discussions on establishing a "Civil Gideon"

5. Enable Individuals to Effectively Help Themselves;<sup>137</sup>
6. Maximize the Use of Available Resources;<sup>138</sup>
7. Overcome Barriers to Access to Justice;<sup>139</sup>
8. Expand the Law School's Role in Access to Justice;<sup>140</sup>
9. Increase Access in Other Ways;<sup>141</sup> and
10. Form a Broad Coalition to Address Ways to Alleviate Poverty in Hawaii.<sup>142</sup>

Most of these action items were not novel. Many had been imperatives for years and remained so. The underlying message was to persevere, and,

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rule—requiring legal counsel in civil cases where a basic human right is at stake—have circulated. If some form of the rule were adopted either legislatively or through court decision, resources to provide counsel would have to be provided as they are now in criminal cases. *Id.* at B-12 to B-13.

<sup>137</sup> *Id.* at I-6. Facing the reality that not every party can obtain or will want legal representation, the participants understood that efforts needed to continue to empower individuals to help themselves in appropriate circumstances. This action item reflected the ongoing efforts, which received a boost after the 1996 Citizens Justice Conference, to make the judicial system more inviting and user-friendly. *Id.* at B-13 to B-14.

<sup>138</sup> *Id.* at I-6. This action item focused on two things: (1) sustaining the discussion on identifying the right conditions for allowing paralegals to help alleviate the legal need of underserved individuals, and (2) ensuring that legal services providers affirm their commitment to smartly work together to eliminate duplication, make accurate referrals, and find more efficient delivery models including those that effectively use new technology. *Id.* at B-14 to B-15.

<sup>139</sup> *Id.* at I-7 to I-8. This also continued a theme that came out of the 1996 Citizens Justice Conference: that certain barriers, apart from financial ones, prevent some in Hawai'i from ever participating effectively in the justice system. This action item affirmed the need to perform targeted outreach, augment the judicial system's capacity to address linguistic and cultural barriers, and develop service delivery practices, such as adjusted office hours, that answer the needs of low and moderate income populations. *Id.* at B-16 to B-17.

<sup>140</sup> *Id.* at I-8. With the William S. Richardson School of Law as the venue for the meeting, it became obvious that the law school was an essential piece of the puzzle. To the extent that lawyer socialization begins in law school, participants agreed to support ongoing efforts and prompt new initiatives by the law school to engender and sustain the core professional responsibility of lawyers to ensure access to justice to all, including the poor. *Id.* at B-18 to B-19.

<sup>141</sup> *Id.* at I-8 to I-9. This was a catch-all provision that included such ideas as supporting student loan repayment assistance for law graduates who engage in public interest law work, allowing licensed attorneys from outside Hawai'i to work for a limited time with providers of legal services to the poor, and adopting rules to permit the "unbundling" of legal services so that pro bono attorneys may engage in less than full representation of clients. *Id.* at B-19 to B-22.

<sup>142</sup> Understanding that legal representation of the poor is only a slice of what could help poor individuals and communities, the participants agreed that some effort should be undertaken to work with others in addressing the larger issues of poverty in this state. *Id.* at I-9, B-22.

where possible, to redouble ongoing efforts to close the still-yawning chasm of legal needs. Of the ten action items, participants quickly targeted one—the creation of a state commission for Access to Justice—because it proved useful to other states in providing overarching direction, coordination, vision, and impetus in efforts to increase access to justice.<sup>143</sup> It was hoped that such a commission would mobilize all necessary sectors—the judiciary, the bar, the legislature, social services providers, legal services providers, and the community—and lead a collaborative endeavor to make access real.<sup>144</sup> The Hui was a prototype of what could happen when well-intentioned people pulled together to advance a shared vision, and its example inspired hope that a commission could achieve even bigger things.

Indeed, it was a subcommittee of the Hui that undertook the work of creating an access to justice commission. After evaluating models from other states, the subcommittee delivered its proposal to the Hawai'i Supreme Court less than two months after the Community-Wide Action Plan was adopted.<sup>145</sup> With the help of Associate Justice Simeon Acoba, whom Chief Justice Moon assigned as the court's liaison to the Hui, the proposal saw quick action, and by April 2008, the Hawai'i Supreme Court announced an amendment to its Court Rules to create a statewide Access to Justice Commission effective May 1, 2008.<sup>146</sup> Justice Acoba, the first chair of the Commission, convened the Commission's inaugural meeting on June 30, 2008.<sup>147</sup>

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<sup>143</sup> George J. Zweibel, *A Hawai'i Access to Justice Commission: An Idea Whose Time Has Come*, HAW. B.J., Apr. 2008, at 19, 19.

<sup>144</sup> *Id.*

<sup>145</sup> See E-mail from George Zweibel, Esq., to Members of the Access to Justice Hui (Dec. 11, 2008, 12:47 HST) (on file with author) (sharing cover letter and the draft proposal for an Access to Justice Commission sent the day before to the Hawai'i Supreme Court).

<sup>146</sup> See E-mail from George Zweibel, Esq., to Members of the Access to Justice Hui (Apr. 25, 2008 16:13 HST) (on file with author) (attaching the Hawai'i Supreme Court's Order dated April 24, 2008). Hawai'i is now among twenty-one states with an Access to Justice Commission. See ABA Standing Committee on Legal Aid & Indigent Defendants—Resource Center for Access to Justice, [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html) (last visited Nov. 14, 2010). The rules governing the Commission are found in Rule 21 of the Hawai'i Supreme Court Rules.

<sup>147</sup> Hawai'i Supreme Court Rule (HSCR) 21 provides a procedure for the appointment of twenty-two commissioners. To achieve balance and diversity of membership, the rule requires appointments that represent different communities and stakeholders. Five appointments are reserved for the Chief Justice of the Hawai'i Supreme Court, and four for the Hawai'i State Bar Association. HAW. SUP. CT. R. 21(c)(3)(i)-(ii). In addition, one appointment each is designated by the Governor, Attorney General, Senate President, and Speaker of the House. *Id.* at (c)(3)(vii). The Hawai'i Justice Foundation, the Hawai'i

Hawai'i Supreme Court Rule 21 enumerates the objectives of the Commission. Among its tasks, the Commission is to provide ongoing leadership to oversee efforts to expand and improve delivery of high-quality legal services to low-income people in Hawai'i; develop and implement initiatives designed to expand access to civil justice; develop a strategic, integrated plan for statewide delivery of civil legal services; cultivate and stabilize long-term public and private funding for legal services; encourage improved collaboration and coordination among civil legal services providers; increase pro bono work by members of the state bar; reduce barriers to the civil justice system; and create awareness among government leaders and the public of the severity of the unmet legal needs and the necessity for a concerted response.<sup>148</sup>

To facilitate its work, the Commission created ten committees<sup>149</sup> and appointed members to each. Although the committees are "advisory" to

Paralegal Association, and the dean of William S. Richardson School of Law also submit one appointment each. *Id.* at (c)(3)(iv)-(vi). In addition, a consortium of legal services providers appoints six members. This consortium consists of civil legal service offices and organizations that provide legal services to the poor. *Id.* at (c)(3)(iii).

The initial roster of commissioners included Chief Justice Moon's appointments: Associate Justice Simeon Acoba (chair), Intermediate Court of Appeals Judge Daniel Foley, Circuit Court Judge Greg Nakamura, and District Court Judges Simone Polak and Calvin Murashige; the HSBA appointments: Jill Hasegawa (vice-chair), Rai Saint Chu, Martin Luna, and Shannon Wack; the Legal Service Providers Consortium appointments: Moya Gray, Charles Greenfield, Mahealani Wendt, Nanci Kriedman, Patti Lyons, and Puanani Burgess; and the Honorable Richard Guy (appointed by the Hawai'i Justice Foundation), Dean Avi Soifer (appointed by the William S. Richardson School of Law), R. Elton Johnson III (appointed by the Hawai'i Paralegal Association), Lillian Koller (appointed by the Governor), Mary Anne Magnier (appointed by the Attorney General), Senator Mike Gabbard (appointed by the Senate President), and Representative Blake Oshiro (appointed by the Speaker of the House). Simeon R. Acoba, *Pro Bono Celebration: The Access to Justice Commission*, HAW. B.J., Dec. 2008, at 5, 7 nn.1-10.

<sup>148</sup> HAW. ACCESS TO JUSTICE COMM'N, 2008-2009 ANNUAL REPORT 7-8 [hereinafter ATJ COMM'N 2008-2009 ANNUAL REPORT].

<sup>149</sup> These include the following committees: Committee on Funding of Civil Legal Services, Committee on Increasing Pro Bono Legal Services, Committee on the Right to Counsel in Certain Civil Proceedings, Committee on Self Representation and Unbundling, Committee on Maximizing Use of Available Resources, Committee on Overcoming Barriers to Access to Justice, Committee on Initiatives to Entrance Civil Justice, Committee on Education, Communications and Conference Planning, Committee on Alleviating Poverty in Hawai'i, and the Law School Liaison Committee. *Id.* at 19. At this writing, the Committee on Alleviating Poverty disbanded after concluding that its subject matter was the overarching theme of the Commission and would be addressed through the collective work of the Commission and the remaining committees. Letter from Mary Anne Magnier to Justice Simeon Acoba, Chair, Haw. Access To Justice Comm'n (undated but attached to the November 16, 2009 Meeting Agenda of the Access To Justice Commission) (on file with author).

the Commission,<sup>150</sup> they bear the responsibility of evaluating and developing projects and new ideas referred to them by the Commission. The committees are also free to cultivate their own ideas for consideration by the Commission. Each committee is comprised of individuals who express interest, expertise, or both on a particular subject area and request appointment to a committee.

In the first three years of its existence, the Commission has provided a unifying presence for those interested in access to justice issues.<sup>151</sup> Convening regular meetings and two Access to Justice "summits"<sup>152</sup> to date, it has provided a source of forward energy. Still in its formative years, the Commission has attempted or accomplished several things that offer a glimpse of its potential and challenges. For example, from the outset, it joined its access to justice partners to secure and increase legislative funding for legal services providers.<sup>153</sup> As part of this effort, it lobbied to increase

<sup>150</sup> HAW. SUP. CT. R. 21(f).

<sup>151</sup> On July 21, 2011, the Hawai'i Supreme Court filed its three-year evaluation of the Commission. Much of what appears in this subsection is summarized in the court's evaluation, which noted the Commission's "impressive and real progress in providing practical solutions to the ongoing challenge of improving access to the civil justice system for low-income individuals in Hawaii." In the Matter of the Hawaii Access to Justice Commission—Three Year Evaluation, No. SCMF-11-0000432 (Haw. July 21, 2011).

<sup>152</sup> On June 24, 2009 and June 25, 2010, the Commission convened its first two annual Access to Justice Summits at the William S. Richardson School of Law. The Summits provided the community with an opportunity to reflect on the pressing need for access to justice and engage others in moving toward viable solutions. The first summit, which featured national "access" advocate, the Honorable John Broderick of the New Hampshire Supreme Court, as its keynote speaker, focused on unmet needs and creative, even novel ways of addressing them. The second summit posed a somewhat more cautious question: "Access to Justice—Is It a Promise We Can Keep?" During the second summit, presentations about daunting challenges were balanced with ones featuring momentum-sustaining forward steps, including reports from Commission committees and workshops by "in-the-trenches" advocates. Each summit drew well over 200 people. For summaries of the first summit, see R. Elton Johnson III, *Crisis and Promise: The 2009 Hawai'i Access to Justice Conference*, HAW. B.J., Sept. 2009, at 18, 18-21. For summaries of the second summit, see Carol K. Muranaka, *Is This a Promise We Can Keep?*, HAW. B.J., Dec. 2010, at 24, 24-27. A third annual conference, entitled "Access to Justice: Pursuing a Noble and Necessary Purpose" occurred at the law school on June 24, 2011. Responding to feedback from the previous two meetings, planners increased the number of workshops designed to provide participants with working knowledge and skills to effectively engage in the access to justice effort. See *2011 Access to Justice Conference: June 24*, HAW. B.J., June 2011, at 24, 24 (promising "a helpful and provocative discussion about seeking justice for the underserved, including excellent opportunities for audience participation").

<sup>153</sup> See *Grant-in-Aid Applications for 2009: Hearing Before the S. Comm. on Ways & Means and the H. Comm. on Finance*, 2009 Leg., Reg. Sess. (Haw. 2009) (statement of Jill Hasegawa, Vice Chair, Haw. Access to Justice Comm'n), reprinted in ATJ COMM'N 2008-2009 ANNUAL REPORT, *supra* note 148, at A-61.

court fees to bolster the Indigent Legal Assistance Fund, a financial resource drawn from court user fees to assist legal services providers serving the poor.<sup>154</sup> While these efforts did not immediately yield the desired increases in funding, they allowed the Commission to test, for the first time, its influence on the legislative branch. Providing a unified representative voice for the major stakeholders in the Access to Justice Movement, the Commission is expected to cultivate its muscle, political and otherwise, to narrow the gap on justice resources. Its initial appearances before a cash-strapped and resistant legislature demonstrated a willingness to do this.

While it continues to nurture its capacity in the legislative arena, the Commission has already shown its mettle in two sectors: the state bar and the state judiciary. With guidance from its Committee on Increasing Pro Bono Legal Services, the Commission developed model pro bono policies for private firms<sup>155</sup> and government lawyers,<sup>156</sup> and “traveled the circuit” to

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<sup>154</sup> See *HB 625—Relating to Surcharge for Indigent Legal Services: Hearing Before the H. Comm. on Finance, 2009 Leg., Reg. Sess. (Haw. 2009)* (statement of Jill Hasegawa, Vice Chair, Haw. Access to Justice Comm'n), reprinted in *ATJ COMM'N 2008-2009 ANNUAL REPORT*, *supra* note 148, at A-63. A telling reminder that success can follow patient and persistent efforts, the 2011 Hawai'i state legislative session saw the passage of Senate Bill 1073, which expanded the Indigent Legal Assistance Fund after several years of stalled attempts. E-mail from Nalani Fujimori, LAS Exec. Dir., to Members of the Legal Aid Society Board of Directors (May 2, 2011, 14:36 HST) (on file with author).

<sup>155</sup> Developed by the Commission's Committee on Increasing Pro Bono Legal Services, this model policy provides benchmarks for firms to follow. *Model Pro Bono Policy for Hawai'i's Law Firms*, HAW. B.J., Nov. 2009, at 12, 12. It begins by reaffirming Hawai'i Rules of Professional Conduct 6.1, which sets an aspirational goal of at least fifty hours per year of pro bono work and generally limits “countable” work to legal services to the poor. *Id.* It urges a firm to credit its attorneys' pro bono work toward billable hour expectations and to consider pro bono activities during performance evaluations and compensation decisions. *Id.* at 12, 14. Moreover, it recommends that a firm talk about pro bono expectations during hiring interviews. *Id.* at 14. It also encourages firms to appoint either a coordinator or a coordinating committee to administer a firm's policy and practices regarding pro bono work. *Id.* The law firm of Ayabe Chong Nishimoto Sia and Nakamura was the first to announce its adoption of this policy. *Id.* at 12.

<sup>156</sup> For well over a decade, efforts have been undertaken to lower barriers that make it difficult for government attorneys to participate in traditional pro bono legal work. See, e.g., Calvin Pang, *Report of the Delivery of Legal Services to the Public*, HAW. B.J., Feb. 1995, at 22, 22 (describing the bar's efforts to exempt government lawyers from having to pay \$50 per year to engage in pro bono legal activities). The Commission weighed in by developing a model pro bono policy for government attorneys. The policy lists a variety of approved activities to include working in legal clinics, providing research or advice to legal services providers for the poor, becoming a board member for such provider organizations, assisting in bar projects that improve the delivery of pro bono legal services, and contributing funds. Other activities, including individual representation, are possible with supervisor approval. The policy sets out procedures for obtaining clearance from supervisory personnel, avoiding conflicts of interest, restricting the use of government

secure pro bono commitments consistent with these policies from private law firms and government law offices. Moreover, it promulgated a policy to enable and encourage judges to pursue pro bono activities commensurate with a judge's ethical duties.<sup>157</sup> It also lobbied the Hawai'i Supreme Court to amend Rule 2.2 of the Hawai'i Revised Code of Judicial Conduct to permit judges "to sanction a lawyer by ordering the lawyer to perform pro bono legal services to persons or organizations . . . or to make a monetary contribution to such organizations."<sup>158</sup>

The Commission also furthered the cause of pro bono participation by lawyers and judges through the appointment of a task force, chaired by Intermediate Court of Appeals Judge Katherine Leonard, to study Rule 6.1<sup>159</sup> of the Hawai'i Rules of Professional Conduct. Specifically, the task force evaluated a possible amendment "to allow . . . substitution of an appropriate monetary contribution in lieu of the recommended minimum of 50 hours of pro bono service hours per year (or for a part thereof)."<sup>160</sup> After receiving input from local stakeholders and reviewing the experiences of other states, the task force recommended adopting an amendment to allow

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resources, and procuring malpractice insurance. Haw. Access to Justice Comm'n, *Model Policy for Government Attorneys Performing Pro Bono Work* (July 20, 2009), <http://www.hawaiijustice.org/downloads/Model%20pro%20bono%20policy%20for%20government%20attorneys.pdf>; see also Jill M. Hasegawa, *Commission Update: Government Pro Bono Policy*, HAW. B.J., May 2009, at 4, 4 (describing the potential pool of pro bono interest and expertise among government lawyers and the traditional concerns that have kept them from easily doing pro bono work).

<sup>157</sup> On February 11, 2010, the Hawai'i Supreme Court issued an order to amend Rule 3.7(a) to permit judges to "participat[e] in pro bono activities to improve the law, the legal system or the legal profession or that promote public understanding of and confidence in the justice system and that are not prohibited by this code or other law." Hawai'i Supreme Court Order Amending Rule 3.7(a) of the Hawai'i Revised Code of Judicial Conduct (Feb. 11, 2010).

The Commission compiled and organized the provisions in the Hawai'i Judicial Code relating to pro bono activities by judges for ease of use by judges. See Haw. Access to Justice Comm'n, *Hawai'i Judicial Pro Bono Policy* (2009), <http://www.hawaiijustice.org/downloads/Hawaii%20judiciary%20pro%20bono%20policy.pdf>; see also *Commission Update: Hawai'i Judicial Pro Bono Policy*, HAW. B.J., Aug. 2009, at 21, 21.

<sup>158</sup> On July 15, 2010, the Hawai'i Supreme Court added a comment to Rule 2.2 of the Hawai'i Revised Code of Judicial Conduct. Designated as Comment [5], the comment authorizes judges to sanction an attorney by permitting him or her "to provide pro bono legal services to persons or organizations of the lawyer's choosing that are described in Rule 6.1(a) of the Hawai'i Rules of Professional Conduct or to make a monetary contribution to such organizations." HAW. JUD. COND. R. 2.2 (LexisNexis 2010).

<sup>159</sup> See *supra* text accompanying notes 50-53.

<sup>160</sup> Letter from Judge Katherine G. Leonard, Chair, Rule 6.1 Task Force, to the Haw. Access to Justice Comm'n (Dec. 11, 2009) (on file with author).

“[a] lawyer [to] discharge his or her responsibility to provide pro bono services by contributing \$500 each year to the Rule 6.1 Fund.”<sup>161</sup> The Commission approved and forwarded the recommendation to the Hawai'i Supreme Court, which accepted the recommendation and is presently receiving public comment on it.

Along with the Rule 6.1 amendment, the Commission persuaded the Hawai'i Supreme Court to invite comment on a proposed adoption of Rule 6.5 of the Hawai'i Rules of Professional Conduct.<sup>162</sup> This proposed new rule, put forth by the Commission's Committee on Self Representation and Unbundling, would provide “that lawyers working with a non-profit organization or the court—to provide limited legal services such as advice over a hotline or through a clinic to a client without the expectation of the creation of an attorney-client relationship—are ‘exempt’ from HPRC 1.7 and 1.9(a) so long as the lawyer does not know of any conflict of interest.”<sup>163</sup>

In a nutshell, this new rule would generally exempt pro bono lawyers from doing a traditional conflict check or agreeing to become counsel of record when assisting individuals on a short-term limited legal service, like a legal hotline or “advice only” clinics.<sup>164</sup> The intent of the rule is to facilitate the participation of pro bono attorneys in these limited but very helpful activities.

The Commission also influenced the development of Hawai'i's mandatory continuing professional education rule that became effective at the start of 2010. Requiring each attorney to earn and report three hours of professionalism training each year, the rule counts “access to justice” as a qualified topic.<sup>165</sup> This resulted from advocacy by the Commission which

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<sup>161</sup> *Id.* at 5. For ease and clarity, the Task Force adopted a set contribution of \$500 rather than a formula that accounted for an attorney's income and other variables. *Id.* at 6. It determined that the Hawai'i Justice Foundation, long the administrator of IOLTA funds, would be the logical repository and administrative agency of the collected funds. *Id.*

<sup>162</sup> As with the proposed Rule 6.1 amendment, the Hawai'i Supreme Court is receiving public comment on changes to Rule 6.5. The deadline for comments was October 31, 2011. Haw. State Judiciary, *Re: Proposed Amendments to Rule 6.1 and 6.5 of the Hawaii Rules of Professional Conduct* (Sept. 21, 2010), [http://www.courts.state.hi.us/legal\\_references/rules/proposed\\_rule\\_changes/proposedRuleChanges.html](http://www.courts.state.hi.us/legal_references/rules/proposed_rule_changes/proposedRuleChanges.html).

<sup>163</sup> Letter from Judge Trudy K. Senda, Chair, Comm. on Self-Representation and Unbundling, Haw. Access to Justice Comm'n, to Judge Daniel R. Foley, Chair, Haw. Access to Justice Comm'n (July 14, 2010) (on file with author).

<sup>164</sup> *Id.* at 3.

<sup>165</sup> ATJ COMM'N 2008-2009 ANNUAL REPORT, *supra* note 148, at 8; see HAW. JUD. COND. R. 2.2 (LexisNexis 2010); see also Kristen Yamamoto & Lynda Arakawa, *CLE Rule Brings New Focus on Access to Justice*, HAW. B.J., Dec. 2009, at 10, 10.



also persuaded the Hawai'i Supreme Court to allow three hours of pro bono work to count as voluntary continuing legal education.<sup>166</sup>

In response to the foreclosure crisis which arrived late in Hawai'i but now has the state in its grip,<sup>167</sup> the Commission proposed a Foreclosure Mediation Pilot Project in the hope of helping borrower-occupants of residential properties stave off a foreclosure action. The Hawai'i Supreme Court formally instituted this project in late 2009.<sup>168</sup> By proposing this project to the Hawai'i Supreme Court, the Commission displayed a capacity to respond to current and specific problems in the community. It also affirmed that its "access" tool box included promoting alternative dispute resolution methods as a means of reducing reliance on resource-intensive court-based adjudications.<sup>169</sup>

These accomplishments suggest several things about the Commission as an institution to date. First, as a creation of *court* rules, the Commission bears an indelible judicial mark, whether warranted or not. The strong representation of judges on the Commission, including its chair, adds to the effect. Although all Commission members are equal peers when convened for Commission business, the normal respect for and even deference to judges is to be expected, especially among attorneys who accept the vertical relationship between the bench and the bar; this adds to the judicial texture of the Commission. It is thus not surprising that the Commission has been most successful with two constituencies: courts and attorneys. These are the same groups with which the judiciary wields a high degree of governance and influence. In contrast, the Commission has not achieved similar success in the Legislature. Given the fund-seeking nature of its

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<sup>166</sup> *Id.*

<sup>167</sup> The *Honolulu Star-Advertiser* reported that in August 2010, foreclosures surged to a total of 1629 statewide, placing Hawai'i's rate of one filing per 315 households at the tenth highest in the nation. Andrew Gomes, *Foreclosures Hit All-Time High*, HONOLULU STAR-ADVERTISER, Sept. 16, 2010, at A1, available at [http://www.staradvertiser.com/news/20100916\\_Foreclosures\\_hit\\_all-time\\_high.html](http://www.staradvertiser.com/news/20100916_Foreclosures_hit_all-time_high.html).

<sup>168</sup> The Hawai'i Supreme Court issued its order establishing the pilot project on September 29, 2009. Hawai'i Supreme Court Order Establishing Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i (Sept. 29, 2009), available at <http://www.hawaiijustice.org/downloads/order%20re%20foreclosure%20mediation%20pilot%20project.pdf>. The project was limited to the Third Circuit on the Big Island where a disproportionately high number of foreclosure cases continue to occur, and was to run from November 1, 2009 to October 31, 2010. A report on the project was due at the end of 2010. See also Laura H.E. Ka'akua, *Commission Update: Hawai'i Revised Judicial Code and Foreclosure Mediation Proposals*, HAW. B.J., July 2009, at 12, 12.

<sup>169</sup> Cf. Tracey S. Wiltgen, *Access to Justice Through Mediation*, HAW. B.J., Mar. 2009, at 22, 22 (describing the use of mediation as a creative, less expensive, and quick approach to resolving housing, family-related, and consumer legal problems that often affect the poor and low-income communities).

initial forays into the legislative arena, success was unlikely in any case. However, it must continue to cultivate an influential presence at the Legislature and other institutions. In doing so, it must straddle the dual nature of its character, leveraging the weight it carries as a judicial proxy, albeit an informal one, while finding its young institutional voice as the amalgam of several major justice system stakeholders, of which the judiciary is only one.

Second, the Commission needs the stability, continuity, and productivity of paid staff. Its accomplishments in its first two years serve as testament for what can happen when committed volunteers come together to tackle a vexatious challenge like securing access to justice for all. However, running the Commission entirely with volunteers poses serious problems once the initial spark of activity and enthusiasm fade. The highly accomplished and motivated volunteers who sit on the Commission and its committees are uniformly busy with their professional endeavors and personal lives. How to keep the reservoir of human fuel from becoming a receptacle of fumes is something the Commission must address for itself and the integrity of its mission. Already, the Commission has seen the resignation of several members, and a few of its committees have been reduced to a small but committed core of appointees. Whether these are the initial symptoms of institutional malaise remains to be seen, but the hiring of committed staff to provide stability, continuity, coordination, and follow-through is a necessary action step. Although this entails the procurement of funds, the Commission must have enough belief in its mission and the importance of its survival to pursue the resources required to hire effective staff. In the short term, this may mean diverting funds that could be applied to direct legal services; however, the long-term benefit of a thriving and productive Commission would justify the investment.

This long-term benefit gives rise to a third observation. One reason the Commission must remain viable over time is its uniting effect upon the Access to Justice community. A unity in effort and purpose gave rise to the visible accomplishments of the Commission's first few years as it rode the momentum generated by its creation. The astonishing speed by which the Commission came into being speaks of the significance and hope that "access" stakeholders placed in its formation. By its institutional presence, the Commission legitimates the Movement and carries a powerful symbolic importance apart from the pragmatic. It remains a hub of ongoing activity, bringing together diverse elements of the Access to Justice Movement to work together with eyes on the common goal. Moreover, the Commission provides a bully pulpit for bringing into line the unhealthy competition that has dotted the history of the Movement. It can referee, it can chastise, it can counsel, all in the spirit of preserving unity within the Movement.

## V. CONCLUDING THOUGHTS

On October 26, 2007, the *Pacific Business News* published a supplement on Access to Justice<sup>170</sup> which followed on the heels of the two-day meeting during which the Hawai'i Legal Needs Assessment of 2007 was evaluated and a Community-Wide Action Plan was developed.<sup>171</sup> Spotlighting the eleven members of the Access to Justice Hui, the supplement placed an exclamation point on the excitement that surrounded the work of the Hui, which spearheaded the 2007 Legal Needs Assessment and its concomitant action plan.

The cover of the supplement showed a green Hawai'i interstate freeway sign symbolizing a directional guide for gaining access to justice. Although the Hui received the supplement cover with some celebratory giddiness, its members understood that the "access" on-ramp was not short, straight, paved, or free. Indeed, each knew that the ramp remained far from complete, its end sticking in mid-air.

This metaphor of an unfinished pathway was also used in a recent white paper on Access to Justice by Deborah Rhode and Dmitry Bam of the Stanford Center on the Legal Profession. Entitled *A Roadmap to Justice*, the study "explores the gap between principle and practice concerning access to justice in America."<sup>172</sup> Rhode and Bam suggest that the roadway is buildable and offer a blueprint for completing it. Yet, even they acknowledge that "access to justice initiatives have been a hard sell, both physically and economically."<sup>173</sup>

Professor Laurence Tribe, until recently President Obama's senior counselor on Access to Justice, told an audience of state supreme court chief justices how the size of this gap "tempts one to reach for sweeping solutions in some unifying vision of 'access to justice' writ large."<sup>174</sup> He observed that it "resists reduction to any grand and fully coherent theme conveniently captured in a simple slogan[.]" and counseled that "[o]nce one recognizes the perils of rigidly idealistic thinking . . . one comes to a recognition that what is perhaps needed [is] more than an inspiring but abstract and utopian

<sup>170</sup> *Access to Justice—Special Advertising Section*, PAC. BUS. NEWS, Oct. 26, 2007, at 1.

<sup>171</sup> See *supra* text accompanying note 131.

<sup>172</sup> DEBORAH L. RHODE & DMITRY BAM, *A ROADMAP TO JUSTICE* (2010), <http://blogs.law.stanford.edu/roadmaptojustice/files/2010/03/RTJ-White-Paper1.pdf> (emphasis added).

<sup>173</sup> *Id.* at 27.

<sup>174</sup> Laurence H. Tribe, Senior Counselor for Access to Justice, U.S. Dep't of Justice, Keynote Remarks at the Annual Conference of Chief Justices 12 (Vail, Colo., July 26, 2010), available at <http://ccj.ncsc.dni.us> (follow link to "Keynote Remarks at the Annual Conference of Chief Justices by Laurence H. Tribe").

call for a thousand-fold increase in funding.”<sup>175</sup> Instead, he suggested identifying a series of “tangible, achievable reforms.”<sup>176</sup>

One of the reforms Professor Tribe prescribed was the creation of a state Access to Justice Commission. Hawai'i has done that. But the core of Professor Tribe's recommendation is to keep *leaning* into accomplishing specific, attainable goals identified by a particular community. To its credit, Hawai'i has done that too. During Chief Justice Moon's tenure, this constant, sometimes trudging, forward push accounts for the motion that *is* the Access to Justice Movement. This Movement is a trajectory formed by “little arrow[s] bent to a particular degree.”<sup>177</sup> We have seen many little arrows during Chief Justice Moon's tenure: the reinvention of the Legal Aid Society of Hawai'i, the blossoming of Volunteer Legal Services of Hawai'i and the growth of pro bono consciousness among attorneys, the adoption of court rules to reduce barriers to pro bono, the willingness and wisdom of legal services providers to band together because it felt right though not always comfortable, the emergence of the Hawai'i Justice Foundation as a source of leadership, advocacy, and financial support, the numerous contributions of the private bar and the judiciary, the law school's modeling of a pro bono requirement, the embracing of alternative dispute resolution and the vision of justice it offers, outreach efforts to parts of the community that would otherwise lack awareness of rights and services, incremental advances in addressing language and cultural barriers, improving support systems including the use of technology for those who choose to or must represent themselves, and the founding of first the Access to Justice Hui and then the Hawai'i Access to Justice Commission, which required and ultimately embodied successful collaborations. And this is just an abridged list.

Yet so many “little arrows” remain in the bow unfired or in the quiver unused. Indeed, among the ten action points of the Community-Wide Action Plan of 2007,<sup>178</sup> only the creation of our Access to Justice Commission can be fully checked off. Everything else remains a work-in-progress, requiring patient and persevering work. The second

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.* Professor Tribe had his ideas on what these reforms should be: effective representation in juvenile justice cases, *id.* at 18, removing artificial and often “enormously counterproductive obstacles to pro bono representation[.]” *id.* at 23, and the creation of an Access to Justice Commission. *Id.* at 27.

<sup>177</sup> This comes from Professor Tribe's closing thought about how the goal of access to justice is not to be gained by a single leap, but by realizing it step by step. He referred to Richard Feynman's description of a trajectory of the photon, “each little arrow bent to a particular degree becom[ing] in the aggregate a ray at the speed of light, lighting everything in its path.” *Id.* at 31.

<sup>178</sup> See *supra* notes 132-42 and accompanying text.

action point, adequate funding, remains particularly vexing. As Rhode and Bam wrote, "[m]oney may not be the root of all evils in our legal aid system, but it is surely responsible for many."<sup>179</sup> Needless to say, the fiscal picture in Hawai'i remains grim as basic judicial services continue to suffer its share of financial cuts. Recently, Chief Justice Mark Recktenwald announced that in the last two years, the Hawai'i State Judiciary saw a reduction of \$19.7 million—13.1% of its overall budget—at a time when the need for judicial services has increased.<sup>180</sup> In this climate, just sustaining the current level of "access to justice" appropriations will be challenging.

Increasing state court filing fee surcharges that fund the Indigent Legal Assistance Fund is one way to keep the funding spigot on.<sup>181</sup> So too is the pending amendment to Rule 6.1 of the Hawai'i Rules of Professional Conduct, which would permit attorneys to fulfill their pro bono obligation through a \$500 donation to a legal services provider organization that serves the poor. While these offer hope and must be pursued, neither will singlehandedly or even together provide an adequate response.<sup>182</sup>

While waiting for financial resources to stabilize, efforts must continue to educate legislators and policy makers about the disproportionate effect of inadequate legal services on the poor. Rhode and Bam correctly point out that "[p]art of the problem is the lack of recognition that there *is* a significant problem."<sup>183</sup> Thus, this requires "more effective political and communication strategies,"<sup>184</sup> something that the Hawai'i Access to Justice Commission could roll up its sleeves and help with. The example of more established Commissions provide a glimpse of what is possible. As reported by Laurence Tribe in 2010, California's Commission secured an

<sup>179</sup> RHODE & BAM, *supra* note 172, at 8.

<sup>180</sup> Mark E. Recktenwald, *A Message from Chief Justice Mark Recktenwald*, in JUSTICE IN JEOPARDY: THE IMPACT OF BUDGET CUTS AND FURLoughs ON THE JUDICIARY, STATE OF HAWAII 1, 1 (2010), available at [http://www.state.hi.us/jud/pdf/judiciary\\_budget\\_impact\\_report.pdf](http://www.state.hi.us/jud/pdf/judiciary_budget_impact_report.pdf).

<sup>181</sup> See *supra* note 155. The measure received the Governor's approval. As of this writing, the benefits of this law will more likely be to offset continuing reductions in government and other funding than to augment existing budgets and allow legal services providers to provide more services to more people.

<sup>182</sup> One recent success on the financial front is the amendment of Rule 23 of the Hawai'i Rules of Civil Procedure to allow courts to direct unclaimed residual funds from class action lawsuits to legal services providers. Coined the "cy pres" amendment, this provision permits parties to agree on the recipient(s), "including nonprofit tax exempt organizations[,] eligible to receive assistance from the indigent legal assistance fund under HRS section 607-5.7 or the Hawai'i Justice Foundation." Hawai'i Supreme Court Order Amending Rule 23 of the Hawai'i Rules of Civil Procedure (Jan. 27, 2011). Although these funds are not always readily available, they offer a boon to the recipient when awarded.

<sup>183</sup> RHODE & BAM, *supra* note 172, at 27.

<sup>184</sup> *Id.*

annual \$10 million appropriation from its legislature despite the well-documented woes of the California state fisc.<sup>185</sup> Washington's Commission managed to nearly double state appropriations from \$6.6 million to \$11 million between 2006 and 2008.<sup>186</sup> An effort should at least be undertaken to glean lessons from the past success of these commissions in tackling what is likely the hardest of their tasks.

Apart from funding, other pieces of the access to justice puzzle require attention. Examples include the use of legal assistants to provide certain legal services, the amendment of the student practice rule to allow law students and not-yet-licensed lawyers to undertake certain tasks, the simplifying of court processes and materials, the full removal of language and cultural barriers, the expansion of effective self-help support facilities,<sup>187</sup> the adoption of a civil *Gideon* rule which would require the provision of free legal representation for certain civil cases where basic human rights are at stake, the institutionalizing of unbundled legal services, more engagement by the law school, and loan forgiveness legislation to encourage law graduates to engage in public interest law work without undue concern about unpaid student loans. This too is an abridged list.

As it leans into improving the delivery of legal services to achieve just outcomes for all, the Access to Justice Movement must embrace collaboration. This will entail trust and humility—virtues that have not always prevailed in all sectors of the Movement. A recent example of when these qualities clearly prevailed was in the efficient, calm, and successful merger of the Hawai'i Immigrant Justice Center (formerly known as Na Loio No Na Kanaka) with the Legal Aid Society of Hawai'i.<sup>188</sup> The merger rescued the state's only public interest law firm serving immigrants while giving the Legal Aid Society of Hawai'i an in-house immigration law capacity, as well as the language and cultural access capabilities which the Hawai'i Immigrant Justice Center had developed over time. Although it helped that both groups historically viewed each other as complementary

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<sup>185</sup> Tribe, *supra* note 174, at 28.

<sup>186</sup> *Id.*

<sup>187</sup> Although much had been invested in creating the Ho'okele Project in the early 2000s, *supra* note 86, the project fell victim to reduced resources in later years. In late 2010, the state bar's Standing Committee on the Delivery of Legal Services to the Poor convened an all-day meeting of stakeholders from all the major islands to reinvigorate the idea of creating a statewide, community-based network of self-help centers. *Save the Date—Self Help Center Conference: November 18, 2010*, HAW. B.J., Nov. 2010, at 28, 28. Through concerted and combined efforts, the first Self-Help Center has launched on Kaua'i. Susan Essoyan, *Self Help Center Gives the Needy a Legal Leg Up*, HONOLULU STAR-ADVERTISER, Oct. 15, 2011, at A1, A6.

<sup>188</sup> *Non-Profits Come Together in Tough Times: Hawai'i Immigrant Justice Center Joins the Legal Aid Society of Hawai'i*, HAW. B.J., Mar. 2010, at 26, 26.

and generally non-competitive, the organizations set aside independence, institutional comfort, and protected positions to pursue their shared interest of serving the community's legal needs. After over a year of serving together, both groups have enhanced each other's productivity.

This past year also saw LAS and VLSH renew their commitment to work together and maintain constructive communications to ensure that their vital services are complementary and most efficiently delivered to the community.

This has also required trust and a willingness to step away from stubborn claims of position and turf. At a time when the resource pie continues to shrink, these examples of collaboration reflect heady decisions to leverage available resources to maximize benefits to the client community.

Embracing collaboration will also mean probing for and inviting the expertise, perspectives, and contributions of non-legal professionals,<sup>189</sup> as well as community members and client groups. This will open opportunities for holistic and relevant approaches that can be therapeutic or preventive while reducing the need for traditional legal resources.<sup>190</sup>

Chief Justice Moon once wrote: "For our justice system to be truly accessible to all, the enforcement of our laws—which governs everything from economic relationships to the most personal and family matters—must be within the grasp of every citizen, not just the wealthy."<sup>191</sup> He also noted that our unfortunate rationing of legal services is "the cumulative net effect

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<sup>189</sup> The Honorable Richard P. Guy, retired Chief Justice of the Washington Supreme Court and a member of the Hawai'i Access to Justice Commission, noted another way in which non-lawyer allies must be called on for help. He wrote: "We need to ask leaders in organizations outside the bar and bench to speak to the legislators about how legal services are important to them. That includes labor, business, police, doctors and hospitals, service and charitable organizations. The case for access needs is apparent to business and community groups based on what they have seen from people they serve and with whom they work." E-mail from Richard P. Guy, Chief Justice (ret.), Wash. Sup. Ct., to author (Dec. 21, 2010, 09:21 HST) (on file with author).

<sup>190</sup> An example of this is the recent outreach effort of the HSBA's Standing Committee on Diversity, Equality and the Law, in collaboration with the Judiciary's Office on Equality and Access to the Courts, the Hawai'i Supreme Court's Committee on Equality and Access to the Courts, and Hawai'i Women Lawyers, to work with underrepresented immigrant groups at the Kōkua Kalihi Valley Health Center. This process began with a listening session in which the client group, a community of Samoan women, shared what it wanted to hear from the legal community. No action was undertaken until the listening ended. When it did, the provider team learned that these women wanted a culturally sensitive and language-accessible way of getting information about domestic violence and how the legal system and other resources could help. Molded to the sensitivities and filters of the client group, the presentation predictably received high praise. E-mail from Jennifer Rose, Chair, HSBA Comm. on Diversity, Equality & the Law, to author (Apr. 5, 2011, 10:54 HST) (on file with author).

<sup>191</sup> Moon, *supra* note 3.

of having a legal and judicial system that is over-burdened and under-funded.”<sup>192</sup> He acknowledged that the chance of reversing this “is slim in light of our still fragile economy and the competing interests of many other types of service programs.”<sup>193</sup>

Despite the darkly realistic assessment, it would not have been like Chief Justice Moon to retreat, and he never did. It was said of the Chief Justice when he retired that “[h]e has clearly honored his father’s commitment to public service and set an example for all of us to follow.”<sup>194</sup> Like the Chief Justice who carried on for seventeen years, unrelenting in his drive to advance the best interest of the judiciary and its many parts, including access and equality in the courts, we have no choice but to stand unfazed by the daunting complexity of the access to justice puzzle. Instead, as the Chief Justice was committed to honoring his father’s call, so too must we stay committed to achieving the “access” vision, one puzzle piece at a time. It is, after all, how we “pay our rent.”

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Gochros, *supra* note 1, at 15.