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TECHNOLOGY, VALUES, AND THE JUSTICE SYSTEM: THE EVOLUTION OF THE ACCESS TO JUSTICE TECHNOLOGY BILL OF RIGHTS*

Donald J Horowitz[†]

I. GENESIS AND ROOTS

Almost four years ago, in early 2000, King County Law Librarian Jean Holcomb, a member of the Technology Committee of the Washington State Access to Justice (ATJ) Board, had an idea. She and other committee members had exchanged thoughts about how new information and communication technologies, including the Internet, were entering the justice system. They realized that the volume and speed of this flow would grow substantially and that it would not take very long before the new technologies would permeate the justice system.

Jean and the committee recognized that technology has the potential to provide increased pathways for access to justice, but that it can also do just the opposite—perpetuate and even worsen existing barriers, disparities, and exclusions, and in fact create significant new barriers, and exclusions. It was then that Jean decided to try out her idea. In May 2000, she wrote an article in the *Washington State Bar News* entitled *The Digital Divide and Digital Justice: Do Clients Need a Technology Bill of Rights?*¹ In this article Jean demonstrated that the dissemination of ideas and information can have potent effects. This theme developed, and eventually resulted in what is today known as the Access to Justice Technology Bill of Rights (ATJ-TBoR).²

* See also the article by Richard Zorza in this volume, in which he describes and discusses the Access to Justice Technology Bill of Rights Project from a different perspective. Richard Zorza, *Some Reflections on Long-Term Lessons and Implications of the Access to Justice Technology Bill of Rights Process*, 79 WASH. L. REV. 389 (2004). We worked closely together throughout the project, and I believe his observations and reflections are very valuable.

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1. Jean Holcomb, *The Digital Divide and Digital Justice: Do Clients Need a Technology Bill of Rights?*, WASH. ST. BAR NEWS, May 2000, at 40.

2. Washington State Access to Justice Technology Principles (popularly referred to as the Access

The historical roots go back a few years earlier. On April 18, 1994, the Washington State Supreme Court entered an Order that would turn out to have a significant impact on justice in the state—and ultimately elsewhere.³ The Order established the Access to Justice (ATJ) Board and declared as its premise that “Washington State’s justice system is founded on the fundamental principle that the justice system is accessible to all persons.”⁴ The Court recognized that access to justice is a basic and accepted value, and that the effort to transform that aspiration into reality must be consistent and ongoing. The Court embraced the reality that access to justice is essential to a democratic system and to attaining its ultimate goal—equal justice for all.

To transform these values into reality, the Washington State Supreme Court Order gave the ATJ Board the mission to promote and facilitate equal access to justice, and, among other tasks, to develop and implement policies and initiatives that enhance, improve, and strengthen access to justice.⁵ On November 2, 2000, the Court entered an Order which reauthorized the ATJ Board as a permanent body, charging it with responsibility to assure high quality access for all persons in Washington State who suffer disparate access barriers to the justice system. The Court gave the ATJ Board the specific task, among others, to “develop and implement new programs and innovative measures designed to expand access to justice in Washington State.”⁶

In every one of its Orders, the Washington State Supreme Court repeated its declaration that access to justice is a fundamental right of all people. These were beacons that many people in Washington State would soon begin to follow, but they were beacons in a somber context.

to Justice Technology Bill of Rights (ATJ-TBoR)) (Dec. 2, 2003), *available at* <http://www.atjtechbillofrights.org>, *reprinted in* 79 WASH. L. REV. 5 (2004) [hereinafter ATJ-TBoR]. Available in Spanish *at* <http://www.atjtechbillofrights.org>.

3. This Order is fully set out in the “Access to Justice” section of the Washington State Bar Association’s website at <http://www.wsba.org/atj/board/1994order.htm> (last visited Dec. 27, 2003).

4. *Id.* This is also the very first statement in the “Access to Justice” section of the website of the Washington State Bar Association. *See* <http://www.wsba.org/atj> (last visited Dec. 27, 2003).

5. The temporary 1994 Order was extended in 1996 by another temporary Order. That Order is fully set forth at <http://www.wsba.org/atj/board/1996order.htm> (last visited Dec. 27, 2003).

6. The Order is fully set forth at <http://www.wsba.org/atj/board/2000order.htm> (last visited Dec. 27, 2003).

II. THE NEED FOR AN ACCESS TO JUSTICE TECHNOLOGY BILL OF RIGHTS

Historically, American society has been substantially divided between people who have access to essential resources—economic opportunity, health care, education, shelter, justice—and those who either experience great difficulties in securing access to such resources, or do not have access at all.

Despite its stated principles, the American justice system has not easily or quickly moved to eliminate existing barriers which impede or block access and opportunity for the poor, ethnic and racial minorities, persons with physical or cognitive disabilities or limitations, children and others easily taken advantage of or abused, or the elderly—indeed all who are vulnerable. As with the rest of society, the law has too often been an instrument of perpetuating social inequities, and in times of change has often adapted its old barriers and applied them to new situations. Again like the rest of society, when major innovations have presented themselves, the development, introduction, and use of these innovations has often mirrored and perpetuated existing inequities and frequently caused new disparities as well. Major opportunities for social progress and equity have been lost, due at least as much to lack of forethought and vision, lazy thinking, and just plain inertia as to malevolent intention.

As organizations, institutions, and systems transfer their information, operations, and a wide range of programs to computer-based information technology and use a variety of new communication technologies, they are also now creating what many call a “Digital Divide.” A central aspect of what is meant by the Digital Divide is the dynamic of technology-caused inequality. The Digital Divide is not so much a problem intrinsic to technology as a statement of how technology and lack of access to it can perpetuate and increase significant power imbalances among groups of people, and in fact create new imbalances. As societal systems increase their use of information, communication, and associated technologies to perform their basic functions of exchanging information and delivering essential services, opportunities, and products, many people who are already marginalized are finding technology to be a new barrier rather than a pathway to meeting their essential needs, creating greater disparity between the haves and have-nots, making things worse, not better.

We are now at a decisive point! The incontestable historical fact is that information and communications technologies do offer to all people, not just a privileged few, the greatest potential for access to information and consequent transformative opportunity since the invention of moveable type over four centuries ago. The historical challenge is that at the same time, these new technologies also threaten to isolate even further those who historically have and currently still experience significant barriers to economic opportunities, health care, shelter, education, and both social and legal justice. Thus, while significant opportunities and pathways leading toward equity and equality are visible, the existence of an additional disparity, a Digital Divide, superimposed upon centuries of pre-digital disparities, looms very large and threatens to eliminate these opportunities, block these pathways, and make the situation even worse than before.

III. THE ROLE OF THE ACCESS TO JUSTICE BOARD IN CREATING THE ACCESS TO JUSTICE TECHNOLOGY BILL OF RIGHTS INITIATIVE

During the late 1990s, the ATJ Board came to believe that the recent and ongoing developments in information, communication, and associated technologies, including the Internet, and the current and future use of such technologies pose significant challenges and significant opportunities to full and equal access to the justice system. Its members came to understand that technology can provide increased pathways for access to justice, but it can also perpetuate or worsen existing barriers and create significant new barriers. Given its mission, the ATJ Board became dedicated to ensuring that technology-generated barriers to accessing the justice system are avoided, eliminated, or minimized, and that opportunities and pathways to the justice system are created or maximized.

The ATJ Board understood that technological innovations and changes and their application and adoption were still in their early stages, and that as yet only a few waves had been felt. However, the ATJ Board also recognized that a great volume of change, indeed a transformation, was building that would inevitably and significantly impact access to and the quality of the system. With this in mind, the Board concluded that in the absence of careful deliberation, planning, preparation, and action, these enormous oncoming changes could have the destructive effects of a tsunami tidal wave. If, however, this great energy was prepared for and constructively channeled, the public and the

justice system would not only avoid significant damage but would likely garner substantial benefits and create a more accessible, equitable, and effective system for all.

After a period of investigation to determine the right course, the ATJ Board determined that an Access to Justice Technology Bill of Rights premised on both federal and state constitutional precepts and our society's core values should be developed and implemented. This body of fundamental principles would apply to all persons and groups, including but not limited to users and potential users of the justice system and those working in or in association with the justice system. This ATJ-TBoR initiative was created to accomplish the following tasks and goals:

1. Develop and implement an Access to Justice Technology Bill of Rights premised on relevant principles contained in the United States and Washington State Constitutions, the mission and underlying principles and declarations generating the creation and operation of the Access to Justice Board, the principles contained in the Hallmarks of an Effective Statewide Civil Legal Services Delivery System adopted by the Access to Justice Board in 1995, and subsequent and effectuating documents and declarations.⁷
2. Identify the strategies, means and methods to ensure that the rights and principles contained in the Access to Justice Technology Bill of Rights are adopted, become publicly known and accepted, and have concrete, practical and effective consequences in the daily lives of all people in the State of Washington.

The methods and goals of the ATJ-TBoR Committee were to:

1. Take optimal advantage of the unique opportunity provided by the confluence of time, place, resources, values, and will at this moment in history so as to increase both access to the justice system and the quality and equality of justice delivered to all persons and groups within our scope of service and influence.
2. Develop, declare, adopt, and implement a living body of just principles which in an ongoing way permeate and influence the justice system in the State of Washington and the lives and conduct of all persons or groups involved with or affected by the

7. See Access to Justice Technology Bill of Rights, *History and Context*, at <http://www.atjtechbillofrights.org> (last visited Jan. 5, 2004).

justice system. To the extent appropriate and acceptable to other states, jurisdictions, and sectors throughout the United States and abroad, provide a model that may constructively be used or adapted.

3. Accomplish the foregoing in a manner that is thoughtful, balanced, and connected to the realities of life, with implementation that is practical, guides consequences, and takes into account those who provide the services in the system and the end user. In the course of so doing, listen to, inform and build a broad-based constituency; develop a public and political will and a collaborative momentum deeply committed to creating and maintaining access to and quality equal justice in the daily lives of all persons.⁸

4. For the quality, credibility, and legitimacy of the process and the products, it is essential that the Committee and the process reaches out, receives, listens to, and in fact uses information, viewpoints, and suggestions from people and groups representing a broad array of backgrounds, experiences, perspectives, and expertise, never neglecting to include those the system is meant to serve—its consumers and end users. Inclusiveness is essential.

IV. THE ORGANIZING STEPS

The new ATJ-TBoR Committee of the Washington State ATJ Board held a major organizing meeting in May 2001. After soliciting and attracting a group of volunteers from various backgrounds, experiences, and disciplines who were willing to commit time and energy, the Committee and the initiative began its formal work in September 2001. First, the group developed a vision of what the effort was about, and then a process to achieve its goals and objectives in concrete form. The adopted Mission Statement was: *"To create a body of enforceable fundamental principles to ensure that current and future technology both increases opportunities and eliminates barriers to access to and effective utilization of the justice system, thereby improving the quality of justice for all persons in Washington State."*

As the first and still the only such public policy initiative in the country, it quickly became apparent to those closely involved in the

8. See Access to Justice Technology Bill of Rights, *Goals*, at <http://www.atjtechbillofrights.org> (last visited Jan. 5, 2004).

effort that this initiative was not directed solely at solving a justice system problem, but was at its core addressing fundamental issues of social justice and equity in a very broad sense.

Working committees were formed and filled by volunteers with knowledge, experience, or background in or relevant to the area of the committee or group focus. The project attracted well in excess of one hundred volunteers of diverse backgrounds and experiences who gave generously of their time and knowledge. There was only one paid full-time staff member, our coordinator, executive director, and versatile factotum at large. All funds for his salary and project expenses were privately raised, costing the ATJ Board, the Bar Association, and the public no money.⁹

The ATJ-TBoR enterprise formally concludes in January 2004, by which time the Access to Justice Technology Principles, popularly known as the ATJ-TBoR, and their effectuating products and mechanisms will be well on their way to being adopted, institutionalized, and becoming no longer a special project but an intrinsic and ongoing part of the justice system and related systems. Projects and efforts underway will be completed, but no new initiatives will be undertaken by this Committee or its subgroups. Appropriate places will be found for new enterprises and tasks to be accomplished. The Steering Committee will continue to exist to supervise the completion of ongoing efforts, advise regarding the placement of new efforts, and aid in the process of institutionalizing and perpetuating the values and effectuation of the ATJ-TBoR process and its products and mechanisms.

V. THE ONGOING CHALLENGES OF TECHNOLOGY ADDRESSED

As the process moved forward, it came to focus increasingly on the concrete realities of the impact of technology on access to justice.

Like most of our society's central institutions, the justice system is rapidly converting its information base and transaction systems to the new information and communications technologies. Some benefits of these new technologies are already obvious. Using a computer at home or at a nearby library branch or community center, people can initiate or respond to court or other legal requirements, communicate, and

9. We are grateful for grants awarded to the ATJ-TBoR initiative by the Open Society Institute, the Horowitz Foundation, the Legal Services Corporation, the Markle Foundation, the Paul Allen Foundation, and the State Justice Institute.

exchange documents with their lawyer or others associated with the legal system. In these cases, using technology means not having to travel to a court or office, which means less travel time, inconvenience and cost, less time away from work and family, less or no copying, mailing, or similar costs. Such ease can be especially important for the elderly, persons with disabilities, persons with limited incomes, and those who literally cannot afford to miss time from work, which can affect their income or even jeopardize their jobs. As informal library surveys are showing, many persons, including those with limited mobility or hearing, can seek and get information electronically about their rights as tenants; victims of domestic violence can learn on the Internet what they can do to protect themselves and can even start legal proceedings from a place they can get to more easily and safely than they can get to the courthouse. The courts and other parts of the justice system can operate more productively and less expensively, making court information and records available, and receiving filings, fees, documents, and information, all electronically. These are some of the more obvious and beginning possibilities.

However, these very possibilities also create the risk of worsening old barriers or erecting new barriers to access and causing greater disparities. While the opportunities described seem positive, these innovations assume access to a computer, reasonable proficiency at using the machines, the necessary software programs, reading capability, fluency in English, and sufficient phone or cable and electricity availability. Without all of that, those with the means available get further ahead and those without fall further behind in having the justice system work for them. The lack of equality gets greater, not less.

As a further example, it has been proposed, and increasingly implemented, that some of the laws and regulations that govern us should be published or available only electronically—no more paper copies. The same is true with informational brochures about the courts, legal rights, and procedures and such. This saves money for the government, but makes access to essential information much more difficult for some sectors of society, and the content of law that governs all of us is then available to a select few. Barriers like this already exist, and the trend is continuing with respect to what is meant to be and is called “public information;” the records of some federal agencies are now available only electronically.

Consider also a well-intentioned court-based electronic filing system that is available twenty-four hours per day, seven days per week to those

who can use the system and can do so outside of usual work hours, or that gives priority response or action to those who can use that system (persons with a computer, an internet connection, and the skill to navigate what may be a complex software program), but not to those who do not have access outside of usual work hours, or those who do traditional in-person or paper filing.

There has already been some delegation to private companies of the conduct and management of electronic court filing, with associated fees. Additional consideration is being given to privatizing other traditionally public justice system functions such as storage, maintenance, and access to court files and records, the functions of which may be rendered commercially viable by the use of electronic digitalization, maintenance, storage, and search procedures. These practices and considerations anticipate that while the courts and some public agencies would not have to pay for these services, members of the public and those who assist or advocate for them would be charged. Without judging the desirability or lack thereof of any privatization, it is apparent that without careful and enforceable standards prerequisite to any privatization, critical parts and functions of the justice system could well become substantially and disparately inaccessible to many members and segments of the public with significant and damaging consequences.

The foregoing are but a few of the issues and problems that come readily to mind. Many others exist, some recognized, others awaiting study, discovery, and solution.

It has been noted that one of the special aspects of American society is that we are more likely than most societies to appeal to the law and the justice system to correct the denial of legitimate claims to life's essential resources and rights. Because the justice system is our society's specific tool to enforce and assure delivery of other essential rights, lack of meaningful or equitable access to the justice system has a geometrically negative effect in perpetuating and increasing the full range of social and economic disparities. On the other hand, increasing meaningful access and reducing or eliminating barriers and disparities in the justice system generates a disproportionately positive effect in providing greater opportunities for the poor and vulnerable, decreasing disparities and divides, and moving society toward greater equality. This is especially true when the values of accessibility and equality are designed from the beginning into major innovations.

It must therefore be emphasized that the ATJ-TBoR initiative is designed to address and move toward solutions not only to justice

system problems, but to fundamental issues of social equity. The transformative capabilities of the new information and communication technologies offer a singular opportunity that simply cannot be overlooked or ignored.

It seems clear that if this effort and its successors are successful in developing and delivering access to the justice system, it will not be an insurmountable task to adapt and use such tools to deliver access to health care and to other essential human needs and services. This cannot be overemphasized.

Further, as indicated earlier, the justice system in our society is a fulcrum. It is a central lever to enforce other essential rights—such as to health care, basic education, and legally mandated food and subsistence. Thus, assuring access to justice is a core requirement that impacts and enhances access to and actual delivery of all other basic and essential human needs.

Consequently, at the same time as the ATJ-TBoR project promulgates a set of authoritative fundamental principles to guide technology development and use in the justice system, it advances the project's more comprehensive goals and aspirations to enhance access to all the indispensable services and opportunities that every human being needs and should have, including health care, education, basic subsistence (food, clothing, shelter), economic opportunity, safety, and justice.

Such access must be meaningful access, relevant access, access in the community, from libraries, from home, from senior centers, after hours from schools, from community centers, from kiosks in branch government offices or department stores, or malls, and wherever else access needs to be. No longer will the justice system exist solely in the courthouse or lawyers' offices; no longer will the health care system exist solely in the hospital, clinic, or physician's office. No longer will the ability to obtain food stamps require a trip of two hours or more duration to and from a large building with a long line, certainly not a private and often a demeaning experience. Access will largely be through the use of information and communication technologies, but we must be and are also interested in the use of any other tools that can help provide or enhance meaningful access to essential opportunities and services.

VI. VALUES, PUBLIC POLICY, AND OPEN PROCESS

This initiative is ultimately about values—no less than our society's fundamental values—and delivering on those values in realistic,

concrete, practical, daily ways. That is access to justice—legal justice and social justice.

This initiative is also very importantly about public policy. To date, societal responses to the emerging and rapidly developing information/communication technologies and their use have very largely been reactive rather than proactive. This reactive mode has often resulted in extreme responses, lacking moderation and balance. Identification and analysis of current and potential problems and opportunities and such planning as have occurred have largely been piecemeal and without continuity.

The ATJ-TBoR process has consistently worked to be proactive, inclusive, and deliberative. It was conceived to be and has been an ongoing thoughtful, multi-faceted, careful, and unhurried process of information-gathering, deliberation, and planning with an opportunity to hone and balance the result. It has examined where we are and what is likely coming in order to get ahead of the curve of time and events and provide a means to stay ahead. Coming and continuing change has been carefully planned for, and the very energy and momentum of that change constructively channeled and utilized. Our plan is to ride the wave, not be immersed by it.

The method—a proactive rather than reactive engagement in a multi-disciplinary, deliberative, inclusive, consumer-respectful process and balanced and careful approach to the emerging issues, opportunities, and problems brought about by new technologies—has itself been thought of as an example to follow more generally in formulating public policy around the subject of new or drastically changing concepts, issues, discoveries, conditions, opportunities, and problems.

For the legitimacy, credibility, and quality of both the process itself and its products, we early understood that it is essential that the process enables, receives, listens to, and uses information, viewpoints, and suggestions from people and groups representing a broad array of backgrounds, experiences, perspectives, and expertise, never neglecting to include those the system is meant to serve—its consumers and end users. Outreach and inclusiveness are essential, and from the first day, the project has engaged in outreach and inclusion, and that never stops and will be an ongoing and intrinsic part of our process to the last day. Beginning with this broad vision, ATJ-TBoR leadership set out to include in its committee membership and to work with a range of people, organizations, and efforts that are dealing with technology's impact on vulnerable populations as well as society in general. From the beginning,

the ATJ-TBoR initiative closely partnered with libraries and librarians, Native American organizations, members and representatives of communities of persons with disabilities, representatives of community technology centers, seniors, organizations working to bring basic telephone and other communication capabilities to all, a range of social service agencies, and members and representatives of other traditionally underserved populations and communities, as well as government agencies, courts, judges, court administrators and clerks, lawyers, technologists, the private sector, and various universities and academics—and more.

To assure that those involved in the project received authentic and practical information and perspectives, along with many other efforts, the Outreach Committee conducted focus groups and interviews with a number of different underserved and diverse groups, including homeless, welfare recipients, persons institutionalized in the correctional system, recent immigrants, farm workers, and victims of domestic violence—and judges. The knowledge gained from the focus groups, the recent Statewide Legal Needs Study, and other direct information sources significantly informed other project committees in their work, and was central in informing the content of the principles of the ATJ-TBoR itself and its accompanying commentary. That knowledge and information will continue to inform other documents, effectuating mechanisms and processes which will enable the ATJ-TBoR project to meet its essential task of assuring the credibility, quality, relevance, and realistic effectiveness of the process and its products.¹⁰

We worked with agencies that serve people such as those who were in the focus groups because we understood that as the project planned and then engaged in the process of converting the Access to Justice Technology Principles into practice, it needed collaborators and allies; indeed all groups working on these issues need each other. These collaborations strengthen the likelihood that the combined insights and influence will actually change for the better the way technology is planned, designed, developed, and deployed not only in the justice

10. The report is posted and available to all on the project website at <http://www.atjtechbillofrights.org>, which itself is an important tool to communicate and interact with various partners and audiences. The statewide Coordinator of the Low Income Telecommunications (LITE) Project is an active member of both the Outreach Committee and the Implementation Committee. The LITE project shares our understanding that access to communication (including basic telephone service) greatly increases the ability of low-income and vulnerable families to access the services they need to build support systems, which in turn allows them to access stable housing, jobs, childcare, and other social services.

system but also in other core social institutions. The results for the vulnerable and disadvantaged in our communities—and thus for all of us—can only be positive.

VII. STEPS TOWARD DEVELOPMENT AND ADOPTION OF THE CORE PRODUCT: AUTHORITATIVE PRINCIPLES TO GOVERN THE USE OF TECHNOLOGY IN THE JUSTICE SYSTEM

From the beginning it was clear that the Access to Justice Technology Principles (Principles) must be more than words sitting on a library shelf. Those working in the project knew the Principles would be no more than that if the project did not focus on making them live in concrete daily practice in the lives of the people the justice system is supposed to serve.

We knew we must be reality-oriented. Therefore, it has always been viewed and expressed as essential that the Principles be adopted by an authoritative body so that the principles themselves are authoritative, respected, and followed. The project also decided to develop and provide position papers on important areas of practical significance as well as a document to accompany the Principles in the nature of a societal impact statement which identifies the consequences that adoption, enforcement, and implementation of the Principles will likely generate not only for the justice system, but for the broader society and its systems and organizations, such as libraries, community and senior centers, infrastructure needs and such. This document should be the basis for a coherent and balanced plan that will set priorities and shape such consequences. All of these documents are intended to help stimulate and marshal the societal and political will and resources to accomplish these objectives.

For well over a year, and through more than a dozen drafts, the project invited, received, and in many instances incorporated blunt and direct criticism, commentary, suggestions, and edits, from increasingly larger circles of people both inside and outside the justice system community, ultimately arriving at what is likely the final form of the Principles and accompanying comments.¹¹

This has been a very real process of listening and learning. The December 2, 2003 draft—the current draft—of the potential Principles is

11. See ATJ-TBoR, *supra* note 2.

the fifteenth, and is a very different document from the early drafts. Every comment and every criticism of each succeeding draft was carefully considered. Some of the earlier drafts were the subject of considerable criticism, and the resulting changes have significantly improved the product. As a result, the same people who criticized now strongly support the current document.

In recent months the project embarked on a path that it hopes and believes will lead to the adoption of these principles in a Court Rule by the Washington State Supreme Court. In these months the content and intent of the Principles have received significant and unanimous support and endorsements. There has been only one noteworthy change, and that change is not to the content or intent, but to the name of the document and the collective Principles from Access to Justice Technology Bill of Rights to Access to Justice Technology Principles.¹²

Thus, in the proposed Court Rule and other appropriate places, the legal name will be "Access to Justice Technology Principles."¹³ That will be accurate, because that is what they are. They will lose nothing in power or effect, and will be true to our Mission Statement adopted at the beginning of this initiative more than two and a half years ago and repeated here: "To create a body of enforceable fundamental principles to ensure that current and future technology both increases opportunities and eliminates barriers to access to and effective utilization of the justice system, thereby improving the quality of justice for all persons in Washington State."¹⁴

12. In the course of the last three years, without trying to do so, the project accomplished what marketing people call "creating a brand." That brand is "The Access to Justice Technology Bill of Rights" or "ATJ-TBoR." People are familiar with it, react to it, seem to know what it means, what it stands for. Many will continue to think of and be inspired by these principles by the name by which they first came to know them. The "brand" will continue, on the ATJ-TBoR web site, in everyday discussions and references, in what it means, and by permeating the justice system with the values it stands for.

13. Potential Washington State General Court Rule: Access to Justice and Technology, 79 WASH. L. REV. 11 (2004).

14. To date the specific and formal endorsements of the current version of the Principles, whether designated as the Access to Justice Technology Bill of Rights or the Access to Justice Technology Principles, are:

On May 10, 2003, the Board of Governors of the Washington State Bar Association unanimously passed a resolution of endorsement of the ATJ-TBoR.

On May 23, 2003, the Judicial Information System Committee of the Supreme Court unanimously endorsed the ATJ-TBoR.

On May 30, 2003, the Council on Public Legal Education unanimously endorsed the ATJ-TBoR.

On June 6, 2003, the ATJ Board, which had unanimously endorsed the ATJ-TBoR at its February 28, 2003, meeting, unanimously passed a formal resolution of endorsement.

The ATJ Board¹⁵ currently intends to propose that the court adopt a General Rule declaring the Principles authoritative and applicable to the justice system and its various components. We hope and expect that the court will do so, because the members of the court, themselves demonstrably dedicated to access to justice, know that these Principles must be authoritative, and must become practical reality, providing concrete results in people's daily lives.

The Principles are now in a condition to be practical and workable tools for decision-makers in the justice system, from judges to administrators to clerks to technologists to webmasters to the Bar Association and many others. They are also a feasible tool for suggesting, planning, prioritizing, implementing, deciding, and providing products, mechanisms, and processes to transform principles into practice, ideas into reality.

VIII. FROM PRINCIPLES TO PRACTICE: EFFECTUATING AND SUPPORTIVE PRODUCTS AND PROCESSES

While the information-gathering, community-building, and development and drafting of the Principles went on, those in the project also undertook the planning and development of products, mechanisms, and processes that will help effectuate the Principles, make them concrete and real in the daily lives of all people in this state—and, it is hoped, elsewhere.

On July 17, 2003, Attorney General Christine Gregoire signed and sent a letter expressing her official and personal support and endorsement of the ATJ-TBoR.

On September 12, 2003, the Washington State Gender and Justice Commission unanimously endorsed the Principles.

On September 19, 2003, the Public Trust and Confidence Committee of the Board for Judicial Administration voted unanimously to send a letter of support of the Principles to the Board for Judicial Administration. This was done on November 6, 2003.

On September 24, 2003, the Board of the Superior Court Judges Association unanimously endorsed the Principles.

On October 3, 2003, the Washington State Minority and Justice Commission unanimously endorsed the Principles.

On October 10, 2003 the Board of the District and Municipal Court Judges Association endorsed the Principles.

On November 14, 2003, the Board for Judicial Administration unanimously endorsed the Principles.

15. On December 5, 2003, the Board of Governors of the Washington State Bar Association endorsed the proposed general rule and voted to join with the ATJ Board with respect to submitting the potential rule to the State Supreme Court.

A. The ATJ Technology Best Practices Template

To bring the Principles to practice, and ensure that access to justice is a reality when technology is used, an ATJ Technology Best Practices Template is currently being developed by a broad-based ATJ-TBoR work group in conjunction with staff at NPower, a premier non-profit organization which helps non-profits with planning and developing their mission-oriented technology. This Template is a key component for actualizing and effectuating the values and principles of access to quality justice.

There are three primary goals of this effort. The first is to assure that all relevant access to justice considerations are taken into account and addressed with optimum quality whenever technology is being planned, designed, developed, or implemented for the justice system. The second goal is to ensure that best or preferred practices in these areas are identified. The third is that information and resources to help incorporate and deliver on these practices are made known and available to the working justice system agency. The template will be comprehensive, and will not only raise questions and issues; it will suggest to the user how best to answer the questions or address the issues, and then identify and link the user to helpful resources to help accomplish the task in the most accessible and economical way feasible. In this way, access will be designed and built into the technology and the system from the start, and as budget people well know, designing and building features into a system from the beginning is far less expensive than having to retrofit them later. This important tool will benefit everyone, from technology designers and programmers to clerks, administrators, judges, lawyers, and, most importantly, the people who need to access and use the justice system.

In mid-2003, the ATJ-TBoR project was awarded a grant by the State Justice Institute to develop and test this Template as applied to electronic filing first to ascertain its capability and effectiveness, and, if capable and effective, then to assure its adaptability to other court systems throughout the nation. Pursuant to the Grant, development and use of the template will then be expanded to apply to other technology tools including document assembly, websites, and public access information terminals. When the Grant ends, and ordinary daily business takes over, other technology tools, as needed, will be added. The Template and its design and content is expected and built to evolve as technology evolves, knowledge and experience in these areas increase, and societal

conditions change. The Template will not remain a special project; it will be integrated as a full, regular, and ongoing part of the system.

Although the Template is now focused and designed for use in the justice system, it is also likely to be adapted into a tool to assure access to any service or opportunity. We believe this Template will be readily transferable to other societal systems that provide essential opportunities, services, and products.

B. Sharing Information About Specific Technologies

As those of us engaged in the process have learned about and demonstrated assistive and other technologies that can help persons with disabilities, we have also found that many technologies that can assist those we traditionally think of as persons with disabilities—persons who are sight impaired, hearing impaired, dyslectic, or have difficulty with mobility or coordination—often can also help others we do not usually think of as having a disability. Such people include those with limited literacy, those who use languages other than English, are of different cultures, come from oral traditions, have limited education, or have difficulty with attention or concentration, or just plain lack confidence and are intimidated by the technologies.

Streaming technologies are one application that helps persons with traditional and non-traditional disabilities. Other such technologies we have learned about include satellites, which provide access to underserved and widely disbursed people in rural areas; kiosks, which provide talking information and services in English, Navajo, and Hopi to people with an almost entirely oral tradition of communication; voice internet portals and audible screen readers developed for the blind but helpful for many others who are print impaired although not vision impaired; and interactive kiosks in the community as well as in courthouses which, among other things, enable the filling out and filing of legal forms in a number of areas such as eviction, domestic violence, and the federal earned income tax credit. These kiosks have easy access audio and video instructions, which supplement or supplant print, in English, Spanish, and Vietnamese.

This raised the important issue of the need to provide fully available, accessible, and affordable broadband and high-speed Internet access for reasons other than the commercial and recreational uses usually discussed. Broadband/high-speed Internet access is necessary for the reasonable delivery and use of the technologies that can provide the audio and video graphics and other content and assistive technologies

designed to provide meaningful access to persons with disabilities and other limitations. Other people who, because of limited finances or other reasons, have no computer where they live often use a local library or community center for Internet access when necessary for their important needs. In those circumstances, because of limited numbers of computers and time and staff constraints, to treat all who need access equitably, users are allowed a limited amount of time at the computer. Whatever the time limitation, if any significant amount of material or dense content needs to be transmitted or transacted, a low-speed modem will likely not get the job fully done in the time available. This can be paralyzing and detrimental in the context of legal problems, government services, health care, or job or economic opportunity. High-speed access becomes far more than luxury or fun; it is necessary for equal or at least sufficient opportunity to access essential services or information. The project will express its views and recommendations in greater detail in a position paper on this important issue.

C. Working to Resolve Access and Privacy Issues

The Access and Privacy Work Group will continue its already substantial efforts to help find a proper balance of two constitutional principles that are now competing: the right to open and accessible courts and court records, and the right to personal privacy. But to understand the problem accurately, it must be recognized that there is more here than the issue of access to court information. Critical and largely unconsidered and unaddressed are the major unavoidable issues of what can be done and is already being done with the information in court records that is available to be accessed.

The transforming of court information and individual case records from paper to electronic form and the ability to access such information electronically and remotely cannot be seen as anything less than a transformative and qualitative change in what "access" means to the judicial system and to all those who interact with that system. Whether from court records or from other sources, when enormous amounts of information can be accessed from one's home or office, or anywhere there is a computer, power, and connectivity, when search capability enables an entire life history to be aggregated in seconds or minutes, when the collected or aggregated information can be disseminated in seconds or minutes to vast numbers of people and institutions (in the hundreds of thousands or millions), or published and put in the public domain permanently for anyone to access at any time, all of this with one

or a few keystrokes, then that is a revolutionary transformation. The consequences for personal privacy boggle the best of minds and cannot be ignored.

What must be done is what courts have historically been called upon to do, and are ultimately good at doing when they address the problem squarely. There must be a thorough and careful effort to find a proper balance between competing fundamental values and rights, or a way to minimize such competition, or both. The courts must do so in this area, whether in their administrative role or in their more traditional role of case-by-case decision-making.

In this context, it is very important to remember the underlying reason for the right to accessible courts and their records. The purpose of the right of access to court information and records has been authoritatively described as to “allow the citizenry to monitor the functioning of our courts, thereby ensuring quality, honesty, and respect for our legal system.”¹⁶ It is not for commercial purposes, gossip, or other reasons not relevant to public oversight of the judicial system.

These issues are too central and critical, with too much at stake for too many innocent people (not just litigants, but witnesses, victims, jurors, family members, and others), and for the credibility of the judicial system itself, for this to be handled routinely or “business as usual,” without a careful examination and discussion among thoughtful, deliberative people, to include the many important stakeholders in the system and those who are otherwise involved.

The ATJ-TBoR Committee believes that unless there is some appropriate but not overdone protection of personal privacy and intimate personal, health, financial, and other appropriate information, people will be increasingly reluctant to exercise their right of access to justice, and will avoid the justice system when possible. They will be slow to report crimes, step forward as witnesses, serve as jurors, or use court processes to resolve disputes and legal issues. A disproportionate lack of privacy will chill the exercise of a person’s right to access and use the justice system. These issues are too central, critical, and “new,” with too much at stake for many people, as well as too much at stake for the credibility of the judicial system itself, to be handled routinely or “business as usual.” There must be careful in-depth examination and discussion among thoughtful, deliberative, people, which should include many stakeholders and potentially affected persons and groups. A number of

16. *In re Cont’l Ill. Secs. Litig.*, 732 F.2d 1303, 1308 (7th Cir. 1984).

jurisdictions have taken the approach of a broad-based special task force to study, deliberate, and report on this difficult subject. The ATJ-TBoR project supports such an approach in this state. ATJ-TBoR does not want a closed system; indeed it stands for the opposite. ATJ-TBoR stands for a system that is transparent, open, and accessible, but with careful, balanced privacy and other safeguards. We will continue our efforts along these lines, as will the ATJ Board itself.

D. Collaborating with Libraries and Others to Provide Access

Libraries and librarians have been core partners from the very inception of the ATJ-TBoR project. Jean Holcomb, whose idea and then commitment inspired this project, is the Director of the King County Law Library. Working committee members include representatives of the King County Library System, the Seattle Public Library, the Washington State Library, and the King County Law Library. Libraries have shared with us recent surveys and client feedback, which adds and gives meaning to information gathered from other sources, including our focus groups and the data and analysis from the recent Statewide Legal Needs Survey. Jean and this writer were featured presenters at the 2002 Annual Joint Meeting and Conference of the Oregon/Washington Library Associations, and at the 2003 Washington State Meeting and Conference. Project members also listened and learned at those conferences. We will continue to work closely with librarians and libraries as we implement the principles and make justice available outside the courthouse and in community facilities.

In a demonstration of real-life application of access principles, the project initiated and then worked collaboratively with the State, King County and Seattle Public Library Systems, the King County Law Library, and a number of legal services and private and government social services agencies (including employment offices) to make available in libraries an Internal Revenue Service/Legal Services Corporation sponsored web-based system that enables eligible tax filers to easily fill out the necessary forms for the previously underused Federal Earned Income Tax Credit. The credit can return as much as \$4000 a year to a low-income working family.

Currently offered in English, Spanish, and Vietnamese, the tax module asks written questions designed at a fifth-grade literacy level, but also has an audio/video guide person reading the questions aloud in the chosen language. The client answers the questions using a keyboard or mouse at his or her own pace. When all the questions are answered,

completed tax forms are available for printing and/or electronic filing. The money comes to the family quickly, thus avoiding the victimization suffered by many families in the past as a result of high priced “Refund Anticipation Loans,” with interest rate ranges from 100% to 700%, offered by many commercial tax preparers.¹⁷ This was conceived and initiated by the special people, consistently imaginative and innovative and yet practical, from the Legal Aid Society of Orange County, California, who became close and consistent partners with the ATJ-TBoR project from very early on.

E. Conducting Focus Groups to Prepare for Implementation

The ATJ-TBoR Implementation Committee has embarked on a different series of focus groups stimulated by our having developed the content of the ATJ Technology Principles. This set of focus groups asks questions of many who will be planning, developing, implementing, and instructing about technology use in the justice system, including public and law librarians, law school faculties, court clerks and administrators, and legal services providers to the poor and vulnerable. Faced with the reality of such an authoritative set of principles, the participants are asked what challenges they anticipate facing; what help this may provide them; what opportunities they see and how to realize them; what problems will be presented and how they might deal with them; and what adjustments will be necessary in procedures, training, personnel, funding amounts, and allocations. The responses to these questions are the basis for an in-depth discussion which follows. This process will inform and enable a transition from principles to practice, stimulate logical and realistic planning and prioritization, and hopefully avoid or minimize the institutional fear and resistance which often accompany new standards or requirements. The earlier Outreach Committee focus groups informed the development and creation of the actual content of the ATJ Technology Principles. These current focus groups begin with the content of the Principles and inform their implementation and effectuation.

17. CONSUMER FED’N OF AM. & NAT’L CONSUMER LAW CTR., TAX PREPARERS PEDDLE HIGH PRICED TAX REFUND LOANS: MILLIONS SKIMMED FROM THE WORKING POOR AND THE U.S. TREASURY 5-6 (2002).

F. Developing Position Papers on Key Issues

The Implementation Committee is supervising the development of a series of position papers examining and commenting on certain key areas that will influence the translation of values and principles into reality. These include: balancing access to court records and personal privacy; information literacy and usability; high-speed access/broadband; criminal justice issues; and technology use in administrative hearings.

G. Developing a Societal Impact and Optimization Statement

The Implementation Committee is also supervising the development of a comprehensive Societal Impact Statement. This document, theoretically modeled after the more well-known Environmental Impact Statement, will address not only potential negatives, but potential positive opportunities as well. The document will attempt to identify and examine potential consequences of authoritative ATJ Technology Principles, not only in the justice system but also in society in general. For example, the document will consider the effect of the Principles on libraries, community centers, and infrastructure needs. The document has already been outlined and is in process of being drafted, after which it will be circulated, thoroughly critiqued, finalized, and published.

H. Surveying Trial Courts

From its beginning the project participated with the Tribal Technologies group, and has also worked closely with other northwest Native American tribal organizations. Project members have been involved in many tribal meetings and conferences, including the 2002 Tribal Technology Visioning Conference. The ATJ-TBoR Judiciary and Court Administration Committee conducted one of the first ever technology surveys of any state's tribal courts and court administrations. This survey, designed in part and facilitated by two Native Americans who work in tribal courts and who are also members of the ATJ-TBoR Committee, and administered with the endorsement of the Northwest Tribal Judges Association, discloses the present state of technology in the tribal courts in Washington State, their plans for the next two years, and what they hope for in the future. This will be an important base of information from which to improve both access to tribal justice and the quality of that justice.

The Judiciary and Court Administration Committee conducted similar surveys for similar purposes of all the state's trial courts at all levels. These surveys were of the state's superior courts; superior court clerks and court administrators; courts of limited jurisdiction, including the district courts and municipal courts; and, as stated above, the Native American tribal courts and their clerks and administrators. The Committee also surveyed private arbitration and mediation agencies and providers.

That Committee is nearing finalization of its report based on the results of the completed surveys it received. The report will present the survey results along with a coherent quantitative and qualitative analysis. This means there will soon be a report and analysis of the state of technology in all levels of the state's trial courts and the plans and hopes for the future of those who work in those courts. We expect this will provide a realistic basis for the courts to render coherent decisions about improving their technology and its use, as well as for all of us to plan and develop documents, mechanisms, and processes to effectuate and make concrete the ATJ Technology Principles in this core component of the justice system.

I. Conceptualizing an "Ideal" Technology Supported Justice System

The Opportunities, Barriers, and Technology Committee has completed a design of its version of an "ideal" justice system that fully uses technology to create or optimize opportunities and avoid or break down barriers. The design proposes specific ways to use technology to modify current justice system realities so as to effectuate and make real the values and principles of the ATJ-TBoR. It is an aspirational but reality-based document that can be used in ongoing justice system innovation and design, and is published in this issue of the *Washington Law Review*.

J. Developing a Public Information and Communication Plan

The Steering Committee and the Outreach Committee are cooperating with the ATJ Board's Communications Committee, the Council for Public Legal Education, and the Public Trust and Confidence Committee of the Board for Judicial Information to develop a public information, education, communication, and marketing plan for communicating information about the ATJ-TBoR to the public. In addition to spreading information about the project, its Principles, and effectuating

mechanisms and processes, this plan will also alert the public to both technological and other available methods of meaningful access to the justice system.¹⁸

K. Conceptualizing, Encouraging, and Helping Plan for Community Justice Centers

The project is working on the beginnings of a collaborative process for thinking about and creating community justice centers, which may be independent or with or within other agencies such as law libraries, senior centers, public libraries, or community or ethnic centers. No longer should the justice system exist exclusively in a centralized courthouse. It is clear that technology provides and will increasingly provide substantial opportunities and means to bring significant elements of the justice system out into the communities of those who would or must use it. The process of causing this to happen should soon begin. Like the online Access to Justice Best Practices Template, this too is a major component for actualizing and effectuating the values and principles of access to quality justice.

IX. RECOMMENDATIONS FOR THE FUTURE

This special enterprise known as the Access to Justice Technology Bill of Rights initiative will formally end in January 2004. However, it is clear that this will not just be a special project, the results of which will terminate with its end. Those involved with the project have already begun to accomplish the essential task of institutionalizing what has been done and is to be ongoing, thus assuring that the values the project stands for will permeate our justice system and our society. The Steering Committee will continue to exist after the formal end date. It will oversee the completion of the tasks and projects not yet completed and will also continue to consider and oversee the adoption, institutionalization, and perpetuation of what has been produced and accomplished. This includes identifying those administrative locations where products will be placed or where processes will go, and where oversight responsibility will reside.

One of the accepted recommendations is to institutionalize the structures and habits of thinking whereby from the very beginning

18. T. W. Small et al., *Designing an Accessible, Technology-Driven Justice System: An Exercise in Testing the Access to Justice Technology Bill of Rights*, 79 WASH. L. REV. 223 (2004).

attention is paid and careful consideration given to the incorporation of access to justice concerns in the design, development, and use of court rules, codes, procedures, and practices.

The collaborative work completed over the last year in working with the Judicial Information System Committee and interested stakeholders and parties in the development of Supreme Court General Rule 30 on electronic filing (which, it has been volunteered by persons from other states, is the best they have seen so far) clearly demonstrates this is highly doable. This spirit of consultation, collaboration, and caring about access should become a habit and an institutionalized pattern. There should, for example, be full membership rather than liaison status in the Judicial Information System Committee for an ATJ Board nominee.

Another recommendation is the institutionalization of regular review of the justice system's operational and procedural rules, codes, and laws—including codes of evidence, confidentiality laws, and codes of professional responsibility and ethics—so as to determine those places where their confluence with technology turns out not to be confluence at all, but collision. Perhaps one or more of the state's law schools or other academic or research institutions, a designated committee of the Washington State Bar Association, or the Statute Law Committee will take the lead and periodically conduct such a review of the rules, codes, and laws by which the justice system operates.

This effort would seek to identify those places where consideration should be given to making proactive, careful, and balanced adjustments or modifications either of the rule, code, law, or technology, or their application or use so as to avoid potential problems that would discourage user access or damage the usability or quality of accessible justice. Such a situation may occur when, for example, technology use to access confidential legal material is assisted by a library aide, thereby potentially compromising the attorney-client privilege. This effort would also make recommendations to the appropriate person, body, or agency, including courts, legislatures, bar associations, citizen groups, technologists, and others who may have the responsibility or authority to make such adjustments.

X. THE CONFERENCE/SYMPOSIUM AS A CLOSING AND LAUNCHING EVENT

The centerpiece and culmination of the Jurisprudence Committee's work on the ATJ-TBoR project was a major national symposium and

conference held on January 16 and 17, 2004, entitled, as is this article, "Technology, Values, and the Justice System," and this dedicated issue of the *Washington Law Review*.

The event was co-hosted by the Washington State Access to Justice Technology Bill of Rights Committee, the University of Washington School of Law, and the Washington Law Review, and co-sponsored by the University of Washington Information School and the Shidler Center for Law, Commerce, and Technology. The cooperative attitude and action among all of these organizations has been exemplary.

The event included such speakers and presenters as Vinton Cerf, in truth one of the parents of the internet; technology ethicist Helen Nissenbaum of NYU and Princeton; legal historian and professor Mort Horwitz of Harvard Law School; expert in value design in technology Batya Friedman of the University of Washington Information School; Chief Justice Gerry Alexander of the Washington State Supreme Court; Former President of the Legal Services Corporation John McKay; former Chief Justice Robert Utter, currently an adviser on the drafting of constitutions and laws of emerging nations; and many others of substantial expertise and professional stature from the academic to the highly practical and concrete. This will have been the first major event at what was then the recently completed and technologically state-of-the-art William H. Gates Hall, the new home of the University of Washington Law School.

This full edition of the *Washington Law Review* is dedicated to the proceedings of the conference; the issues addressed and the legal and multidisciplinary issues raised by the ATJ-TBoR; the values, goals, process, and products underlying the ATJ-TBoR; and its consequences and local, national, and international ramifications. The conference and this *Washington Law Review* symposium edition are not intended to be a conclusion, but rather, as graduations are now called, a commencement. They were designed to stimulate a thoughtful national discussion about these crucial issues, which will become even more important as time goes on.

XI. CONCLUSION

The intention is that the ATJ Technology Principles and its accompanying documents and effectuating products, processes, and mechanisms to bring the principles to reality will result in thoughtful planning, balanced priority setting and decisions, and more efficient and cost-effective solutions. It must also help mobilize the will and resources

to add the powerful tool of information/communication technology to the powerful tool of the law to at last deliver on this nation's three centuries old promise of accessible, equal and quality justice for everyone.

These Principles are also intended to be a model for other geographical areas and for other essential human service sectors. They are intended and designed to raise the consciousness of the justice system and the broader society to the consideration of access to justice and the use of technology to break down barriers and increase access, thereby minimizing or eliminating both the "Digital Divide" and the persisting centuries-old divides that preceded it.

To accomplish that, we must be clear about how technology is changing the ways in which society conducts its affairs, what the barriers may be, and what solutions are emerging. Then, to bring about and perpetuate the desired changes, we must continue to work in partnership, collaboration, and cooperation with many others. As we build and work with a network of constituencies to enable equal and meaningful opportunity and service delivery, we must also build the collective political will, power, and momentum to assure that the technologies are injected and infused with the values of our federal and state constitutions and other fundamental documents, that they actively serve the professed values of inclusiveness, equality, and justice for all—not only in principle but in fact, not only theoretically but in concrete practical reality. To reach these goals requires commitment, but more is necessary. That commitment must ignite the essential and ongoing requirements of persistence, perseverance, and endurance.

This effort is still the first and to the present only such undertaking anywhere in the nation. As a result, people and organizations from many other places and regions have expressed and acted on their desire to be involved with us and help us produce as good an outcome as possible. They have said they want to help us develop a model that other states, regions, indeed countries, may adapt and use, and they have in fact helped to do that. Our primary job is to create an excellent result for the people of the State of Washington, but if our process and our product is of sufficient quality to help others beyond our borders in the United States or elsewhere, then so much the better. Indeed, the happy fact is that such openness also pays the dividend of enabling us to receive the benefits of the relevant experiences and best ideas of many others, which will in turn benefit the people of our own state. Simply stated, value can be added for everyone; everyone can win.

A great deal has been said and written about what has come to be called "The Digital Divide," both domestically and internationally. We declare that access to, use of, and respect for the rule of law is an essential way to move to a less divided, more equitable society and world. Accessible, equitable, and quality justice for all individuals and groups is a recognized worldwide value. Access to justice is culture-neutral. Whatever their background and culture, whatever the shape and nature of their system of justice, meaningful access to justice can and does empower people to be part of creating their own just societies. It has been and is the commitment of the Access to Justice Technology Bill of Rights Committee that its work will be a positive contribution to that never-ending effort.