



**Supreme Court** — THE JUDICIARY • STATE OF HAWAII

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**Ronald T.Y. Moon**  
CHIEF JUSTICE

## STATE OF THE JUDICIARY ADDRESS

by the

**HONORABLE RONALD T. Y. MOON**  
*Chief Justice, Hawai'i Supreme Court*

Wednesday, January 27, 2010

Noon

Senate Chambers, State Capitol

President Hanabusa, Speaker Say, Governor Lingle, distinguished members of the twenty-fifth Legislature, former First Lady Mrs. Ariyoshi, former Chief Justice Richardson, fellow justices and judges, distinguished members of the federal bench, Judiciary and other state employees, members of the Bar, state Cabinet members, and members of other government agencies, my fellow members of the Wahiawa United Church of Christ, other special guests, family, friends -- especially those from Korea -- and fellow citizens: Aloha, anyonghashimnika, and good afternoon.

As a privileged honorary member, I also extend greetings to the members of the Royal Order of King Kamehameha the First, the Consular Corps of Hawai'i, and the Wahiawa Tai Guk Club, as well as to those Chinese organizations which have bestowed upon me the status of honorary Chinese citizen.

### Introduction and Words of Appreciation

In 1997, I had the privilege and honor of being the first chief justice invited to deliver a state of the Judiciary address to a joint session of the Legislature. Today, I stand before you with mixed emotions because, although I am looking forward to joining my fellow retired judges and other judiciary employees at my neighborhood McDonald's in just 217 days, this is my last state of the Judiciary address. I, therefore, thank you for this opportunity to share with you the accomplishments as well as the challenges of the third branch of government.

I also thank the many legislators, past and present, for their support of the Judiciary's various budget requests and proposals over the years, without which we could not have provided the many services and improved facilities that benefit the people of Hawai'i. Included among these are the Judiciary's four new courthouses: (1) the Abner Pākī Hale or Kāne'ōhe district court building that opened in March 2003; (2) the Kaua'i Judiciary Complex or Pu'uhonua Kaulike ("Sanctuary of Justice") opened in September 2005; (3) the Hilo Judiciary Complex or Hale Kaulike ("House of Justice") in March 2008; and, finally, (4) the much-anticipated opening of the Kapolei Court Complex, including its adjoining Juvenile Detention Facility.

We greatly appreciate your continued support of the varied specialty courts and treatment programs, such as drug, mental health, teen, and girls courts, and the HOPE program. We also appreciate your approval of increases in the fee schedules for court-appointed attorneys for indigent criminal defendants, parental rights termination cases, and for guardians ad litem. Your steadfast support in these areas has allowed the Judiciary to provide many services

that, unquestionably, have made significant and positive impacts on the lives of the beneficiaries of those services, including their families and their communities.

### Specialty/Treatment Courts & the Judiciary's Mission

The implementation of the various specialty courts and treatment programs within the Judiciary underscores how far we have evolved from the traditional core mission of judiciaries across the nation, which had been, simply, to adjudicate or resolve disputes brought before its courts. Over the last several decades, the role of state judiciaries has expanded. Many judiciaries and legislatures across the country have created an effective balance between traditional law enforcement and a problem-solving, restorative-approach that rebuilds lives and communities. As a result, the exercise of judicial power and the breadth of its application in today's modern judiciary has extended far beyond adjudication to include diversion programs in which rehabilitation and treatment go hand-in-hand. Unfortunately, budget cuts have resulted in fewer services being available, fewer clients served, and a slow-down in admittance for treatment that could result in program goals not being realized. As the current budget issues continue to threaten the Judiciary's service-oriented structure, we fear that more cuts may force us to completely abandon the modern, service-oriented model.

### Judiciary's Efforts Pre- & Post-2009 Budget Cuts

Because of our commitment to share in the responsibility of dealing with the State's budget deficit, the Judiciary, before the 2009 legislative session, imposed significant restrictions on the use of per diem judges, overtime, hiring, travel, purchase of service contracts, repairs and maintenance, and replacement of aging equipment. At the close of the 2009 session, we experienced budget reductions that included the elimination of 79 vacant, but essential, staff positions, a lump sum decrease in operating expenses, and a first-time-ever salary cut for Hawaii's justices and judges, for a total reduction of \$11.5 million. Nevertheless, while in the process of balancing our budget post-session, we continued looking for ways to assist with the State's economic situation.

Furlough Plan: As you know, the judiciary's budget comprises just 2.6% of the state's total budget of \$5.3 billion and about 71% of our appropriation is dedicated to payroll and personnel expenses. With less than 30% of our budget dedicated to operations, we recognized that any further operational cuts, over and above those already made, would be devastating. However, as I said, we believed it necessary to continue to explore every avenue in the hope of negating, or at least, minimizing any further reductions to our budget base this year. Consequently, since November 6 of last year, the Judiciary implemented a two-day-a-month furlough for all HGEA-employees, resulting in an unprecedented, twice-a-month closure of all courts, statewide. The Judiciary anticipates that the savings, projected through the end of the current fiscal year, will amount to \$4.8 million and, if continued at the current two-days-per-month schedule for fiscal year 2011, will yield another \$7.6 million savings.

Because the Judiciary has no control over its workload, the burden of doing the work with fewer financial resources, fewer people, and in fewer days fall upon our Judiciary employees. I, therefore, take this opportunity to publicly thank all of our judges, administrators, and other Judiciary employees for the sacrifices they have made, their stamina in handling the increased workloads, and their steadfast commitment to continuing to serve the public. I also thank the members of the public for their patience and understanding as they too, must deal with longer wait-times caused by the semi-monthly court closures and overburdened court staff.

POS Contracts: As I stated earlier, we were compelled to impose significant cuts in order to balance our budget after the 2009 session ended. For example, we cut more than \$3 million from purchase of service,

or POS, contracts. These contracts involve the purchase of assessment and/or treatment services for substance abuse, child sex abuse, and mental health, as well as provide emergency shelter services, juvenile client and family services, anger management and victim impact classes, and more. The significant reduction in the availability of these types of services is already impacting our specialty courts and treatment programs. We are concerned that any further reductions of services, or the elimination of these services altogether, will have serious consequences for our citizens in the form of increased domestic violence and other crimes, higher recidivism rates, prison and/or juvenile facility overcrowding, as well as increased concerns regarding public safety and delayed access to justice. Allow me to spend a few minutes on some specifics.

Drug Courts: Because of the 2009 budget cuts, the treatment capacity of Oahu's Adult Drug Court was reduced from 160 to 130 clients, leaving 30 defendants on a wait list and likely headed for prison. Adding just 30 people to our already over-crowded prison system at a cost of \$139 a day each or \$50,735 per defendant per year -- will result in an annual cost to the State of \$1.5 million.

From a cost-benefit perspective, consider the consequences of further cuts to our budget that could result in additional reductions to our treatment capacity or the closure of Oahu's Adult Drug Court altogether. Using the same formula and applying it to the 120 defendants currently enrolled in the program, the cost to the State -- and more specifically, the Executive Branch -- to incarcerate these defendants would be approximately \$6 million a year, as compared to the total appropriation for the O'ahu drug court program for FY2010 of approximately \$877,000. More importantly, these potential costs to the State will multiply if further cuts mean closing our other adult drug courts on the neighbor islands, as well as our juvenile drug courts statewide, which would cost the State approximately \$26.2 million, as compared to the entire FY2010 appropriation of \$4.7 million for all of our drug court programs (including the family drug court) statewide.

Clearly, diverting defendants to drug treatment through our various drug court programs has the potential of saving the State millions of dollars, especially when you consider that our statistics indicate that the average recidivism, or re-offense rate for adult drug court, statewide, ranges from 3.5 to 16%. Allow me to explain. The Bureau of Justice Statistics reports that over 50% of those released from prison will re-offend within three years. In other words, a majority of those incarcerated without the benefit of the drug court program will return to the courts and prisons, and each re-incarceration costs the state more money.

Additionally, to graduate from drug court, clients must meet certain requirements, such as obtaining their "General Equivalency Diploma" or G.E.D., be in school or gainfully employed, have a place to live and some form of transportation. Graduates must also pay their court-ordered fines, fees, and restitution. Thus, drug court graduates become productive and meaningful contributors, financially and otherwise, to our society. Clearly, without drug court intervention, the state loses revenues from the fines, fees, and taxes that cannot be collected because the incarcerated-defendant is not gainfully employed. Moreover, incarceration shifts the cost of housing and subsistence from the defendants to the state, and, for the duration of their imprisonment, drains the limited resources we have.

HOPE Program: Similarly, costs to the State increase when probations are revoked. As you know, probationers are expected to follow the terms and conditions of their probation, such as staying drug free, staying arrest free, and keeping appointments with their probation officer. Probationers in the First Circuit have learned, through the Judiciary's Hawaii Opportunity Probation with Enforcement or HOPE program, that probation violations will not be tolerated. The program is premised on the philosophy of immediate and certain punishment for probation violations, usually involving a short jail term proportionate to the severity of the violation. Hawaii's HOPE program has gained national attention as a model program which has been adopted or is being considered in other states.

Within six months of the program's inception in 2004, the rate of positive drug tests fell by 93% for HOPE probationers as compared with a fall of 14% for probationers in a comparison group as reported by researchers from Pepperdine University. Just this month, researchers reported that,

In a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer, and 53 percent less likely to have their probation revoked.

Again, from a cost-benefit perspective, it makes sense to spend \$1.82 per day to supervise a HOPE probationer as compared to \$139 a day to incarcerate the same offender. Additionally, as with our drug court graduates, HOPE probationers remain in our community as productive and meaningful contributors to society.

Domestic Violence: In the area of domestic violence, victims are -- sadly -- becoming victimized again; this time by the current economic crisis and an underfunded judicial system that is unable to satisfy the high demand for treatment and service programs that they desperately need. A bad economy means lack of jobs and money. Job layoffs or reduced income caused by reduction in work hours fuels existing tensions in the home over finances and increases the likelihood of violence. Experts agree that domestic violence is more than three times likely to occur when couples are experiencing high levels of financial strain. Consider, for example, statewide statistics regarding court protective orders. In FY2008, 4,532 for protective orders were received, just 27 more than the previous year. However, in FY2009, new filings increased by 563 or 12.4%, totaling 5,095 protective order requests. The impact has been felt by the family court judges handling these cases, one of whom reported hearing 18 temporary restraining order cases in one morning -- the most he has handled in a single court session during his six-years on the bench in the first circuit. The most prevalent theme from the abuser's perspective was "I lost my job" or "I lost my house or can't pay rent because I lost my job, and so I lost my temper."

Domestic violence victims often have complex and difficult legal needs. They face a wide range of issues, such as loss of housing, medical care for injuries, lack of transportation, lack of counseling services, loss of wages, substance misuse, and more. The recent reduction in POS contracts has not only severely impaired the Judiciary's ability to provide services to domestic violence victims and perpetrators, but increased the wait-time for batterers to receive treatment services from one to two weeks in the best case and from two to five months in the worst case. This means that untreated batterers are living in our communities, jeopardizing the safety of their victims and the community in general. Further cuts will cripple the Judiciary's ability to provide these services in the future. In fact, domestic violence service providers in the Third Circuit on the Big Island believe that, because of the 40% reduction in their POS contract allocation, they will have a \$75,000 deficit by May if they continue providing services at the current level. This means that the courts will be forced to limit court-ordered services, and there is a real chance that services for victims will not be available on the Big Island.

Experts agree that children who grow up in a domestic violent environment do poorly in school, are being abused themselves, and have no sense of self-worth. By the time they reach adulthood, they've already been in trouble with the law, including being in and out of juvenile court and/or detention facilities, and soon find themselves in and out of prison. Thus, the cycle of violence is passed on from one generation to the next, including the costs to government. How can we break the cycle of violence and eliminate the attendant costs? --- The answer, I submit, lies in maintaining these programs and services through adequate funding.

Unfortunately, court closures and increased workloads will continue to have a direct and severe impact on court operations and, in turn, on the members of the public. Trials will take longer and are already being set further down the road simply due to the shortened work week. Similarly, attorneys and parties are waiting

longer for hearings and conferences to be scheduled. Such delays, although inevitable, can have unintended and, possibly, life-threatening consequences.

Consider, for example, a situation in family court where the domino effect resulting from the loss of one position has increased the waiting period for an adoption hearing from 30 days to as long as six months. The waiting period began to enlarge when the vacant position could not be filled due to the hiring freeze. As a result, the duties of processing and scheduling final adoption hearings were transferred to a division that was already operating with two frozen staff positions. The delay, although understandable in the current economic environment, will become nearly intolerable, especially where an adopted child has special medical needs, and the adoptive parents can't enroll the child in their medical insurance plan until they provide the required final adoption papers. Such delays could cause serious consequences to the child's health and development -- or worse -- create possible life-threatening consequences.

Similarly, the inadequate provision of services and diversion options for other children and youth in our family courts will have a devastating impact on their lives. Without early intervention, these children and youth will develop educational and behavioral problems, making it more likely that they will matriculate to the adult criminal justice system.

### Judicial Independence: Institutional Perspective

In the past, I have spoken to you and your predecessors about the importance of judicial independence and have focused on "decisional independence," that is, the freedom of judges to render impartial decisions based solely on the evidence adduced in a specific case and the applicable rule of law, without influence, threats, or fear of reprisals. However, from an institutional perspective, we all recognize that the Judiciary is constitutionally dependent on the legislature for funding. As such, I felt compelled to discuss the extremely negative effects that an underfunded Judiciary has on public safety and the administration of justice, including the shifting of increased economic costs to the Executive branch and the individuals served by the courts.

The Judiciary is already at the stage where lack of resources is affecting public safety and the administration of justice. Program budget cuts, court closures due to furloughs, prior staff reductions, and hiring freezes have already affected employee workloads and increased the amount of time it takes to process cases and do the work that is necessary to the administration of justice.

The cruel irony in these difficult economic times is that the demands on our courts intensify, and, unfortunately, no matter how much we are called upon to sacrifice in terms of court programs, salaries, benefits, and the like, nothing compares to the devastating impact that the current situation has and will continue to have on our citizen's access to justice. But, let me share some positive news.

### More Positive News

Girls Court: As you may know, Hawaii's Girls Court is one of the first gender-specific, problem-solving courts in the United States. The program was built on the need to pay especially close attention to female juvenile offenders whose numbers in the criminal justice system have risen at a much faster pace than for boys. Gender-specific programming recognizes the fundamental differences between male and female juvenile offenders as well as their different paths to delinquency. By building on their strengths, Girls Court clients avoid becoming involved in the criminal justice system as adult women, as victims of domestic violence, and as adult-mothers in child protective custody proceedings.

Amongst Girls Court's many successes is the story of Anna, who -- at the age of 16 -- was referred to Girls Court in 2006. She had substance abuse and anger management problems; she was failing in school and ran away from home often. At first, Girls Court was an unwanted presence in Anna's life as she believed the presiding judge and staff simply wanted to control her life when all she wanted was to be left alone. Through intense and, sometimes, difficult individual, family, and group therapy sessions, Anna began to trust enough to share her story.

Anna's father died when she was nine-years old. The family was devastated and struggled with their grief. Anna's mother started abusing substances, and, eventually, the family became homeless, living on the beach. By age 15, Anna -- along with her siblings -- had been removed from her mother's care by child protective services. Almost immediately upon being placed in foster care, Anna started running away. On the streets, Anna was violated and physically victimized. She learned to fight, use drugs to numb her pain, and developed a rough-and-tough attitude.

While with Girls Court, Anna's tenacity to survive continued to be her strength, and, with the help of the Girls Court judge and staff, Anna and her family were able to work through issues that had been causing them paralyzing emotional pain. She had the unconditional support of her mother, who -- herself -- had triumphed in overcoming her substance abuse problems and was clean and sober.

Anna is now 20-years-old and continues to keep in touch with the staff at Girls Court. She has served as a speaker to girls entering the program, sharing her experiences and encouraging them to be open to the process of change. She is working full time as an assistant and activities coordinator in a residential program for adults with mental disabilities. She sees her work in this area as a potential career. She has certainly come a long way.

It is, indeed, my pleasure to introduce to you Christianna Maglinti and her mother, Dawn. Will Anna and Dawn please stand.

Court Interpreter Certification: Since 1995, the Judiciary has been working diligently to enhance access to justice for our linguistic minority court users. We firmly believe that, if the Judiciary is to be truly accessible to all, we must also be able to service the non-English speaking public, as well as those who have limited English proficiency. In the courtroom environment, we depend on court interpreters to assist us because justice surely cannot be served if, for example, a non-English speaking defendant says in his native language, "I was so mad I could have killed him," and the interpreter translates, "I was so mad, I killed him."

Thanks to your support, I am pleased to report that, in 2006, the Judiciary implemented a Court Interpreter Certification Program to ensure that court users obtain properly qualified interpreters. In 2007, the program produced the first certified Ilocano court interpreter in the nation and currently has 168 certified interpreters in thirty different languages, including the high demand Pacific Island languages, such as Chuukese and Marshallese. Because the Judiciary is the only entity in the state that formally screens and tests interpreting skills, many non-judicial agencies and organizations have come to rely on the Judiciary's list of certified interpreters.

New Appellate Process: We also appreciate the support received from the legislature in 2004 through Act 202 and in 2006 via Act 145 that restructured our appellate court system. I am pleased to report that the new appellate process is working well and has yielded positive results. The movement of the procedural case processing tasks to the intermediate appellate court has enabled the supreme court to resume oral arguments on a regular basis and to address issues of significant public importance, as well as publish a greater portion

of its dispositions. Additionally, the age of cases has decreased from 347 days in June 2006 to 246 days in June 2009.

I extend my appreciation to my fellow justices and supreme court staff for their efforts in clearing the backlog of cases that were retained by the supreme court when Act 202 was implemented. I also extend a special thanks to the judges and staff of the Intermediate Court of Appeals for their assistance during the transition and for their continuing good work. Following your review of our formal report, which has been submitted, I am confident you will agree that the new system is working well and hope you will support our efforts to better serve the people of our state by making the current appellate court structure permanent.

Technology: Additionally, despite the continuing reductions to our budget base over the past several years, we have made great strides in the technological arena. For example, in November 2007, we successfully implemented an electronic interface with a collection agency partner to refer and collect delinquent traffic fines and fees. Since the inception of the collection interface, the Judiciary has deposited more than \$10 million into the state's general fund.

Following the Legislature's direction to establish a task force to examine the State's bench warrant system, the Judiciary -- working with the Hawai'i Information Consortium, the Department of Public Safety, the Honolulu Police Department, and others -- piloted an electronic bench warrant project in the first circuit in March 2009. This e-bench warrant system allows the Judiciary to provide law enforcement agencies with updated and secure access to view and print traffic warrants via a web browser that were previously required to be physically retrieved.

I extend our sincere appreciation to the many participants that helped make the e-bench warrant project a success. The pilot project has garnered such positive reviews that the Hawai'i Information Consortium and the Judiciary will be making the system available to police departments statewide and will expand the program to felony and misdemeanor warrants when those criminal case types are integrated into our statewide case management system, more commonly known as the Judiciary's Information Management System or JIMS.

We are also looking forward to the implementation of electronic filing when the appellate and criminal case types are migrated to JIMS. If all goes well, we anticipate commencing e-filing in the appellate courts in June and in the criminal courts by the end of the year.

Kapolei: Finally, I am pleased to report that the Kapolei Court Complex, including the new Juvenile Detention Facility, will open this Spring! Throughout the planning and design process, our commitment to the West O'ahu community, to court users island-wide, to the juveniles under the protection of the family court statewide, and to our employees has been steadfast. The larger courtrooms and waiting areas will not only enhance family court operations, but provide a safer environment for our judges, as well as family court practitioners and their clients. The benefits of having a brand new detention facility, including its proximity to the courthouse, are obvious. In short, we anticipate that moving the bulk of our family court operations to Kapolei will improve the quality of services we provide to our many family court users. At the same time, certain operations -- like the entire Adult Criminal Division of family court -- will remain in Honolulu.

In a few months, family court practitioners and the public will be able to file documents at either the Honolulu or Kapolei locations. The availability of video-conferencing between the courthouse in Honolulu and in Kapolei will negate travel time in certain types of proceedings. Self-help centers to assist self-represented parties will also be available in both locations. Once the move is completed, other judiciary offices, currently housed in leased-office spaces, will move into Ka'ahumanu Hale. Thus, even with all the gloominess

surrounding budget cuts, salary reductions, and furloughs, we have much to look forward to with the opening of the new courthouse and detention facility in Kapolei.

### Impact of Any Further Cuts

Ladies and gentlemen -- I am proud of the many positive contributions made by the Judiciary in spite of our budget situation. And, as I said earlier, the Judiciary's self-imposed spending restrictions and cuts in programs and services, as well as its furlough plan, underscores our commitment as a co-equal partner in government to share in the responsibility of dealing with the current economic situation. I must emphasize, however, that the steps we have taken thus far to meet that responsibility cannot be sustained without serious consequences to our mission and, most importantly, without serious consequences to our citizenry.

The Judiciary is well aware that last month's projections from the Council of Revenues puts the deficit at \$1.2 billion. We fully recognize the enormous and difficult task ahead of you this session. We are hopeful that the measures we have taken thus far, including the furlough plan, not only demonstrate that we are partners with you in this crisis, but convince you that the Judiciary will not be able to withstand the devastating effects of any further cuts to its budget this session.

### Closing

To the dedicated leaders and members of the Twenty-Fifth Legislature: again, thank you for the opportunity to deliver this, my last, state of the Judiciary address.

To the current and past legislatures and to the people of this great state: It truly has been an honor and a privilege for me, during the past nearly 28 years, to serve as a trial judge in the circuit court, as well as associate justice and, for the past almost 17 years, as chief justice of the Hawai'i Supreme Court. I am grateful to have been able to personally share, this year and in years past, the many accomplishments as well as challenges of the dedicated men and women of the third branch of government.

Mahalo and Aloha!