



Supreme Court — THE JUDICIARY • STATE OF HAWAII

417 SOUTH KING STREET • ALI'ĪOLANI HALE • HONOLULU, HAWAII 96813-2943 • TELEPHONE (808) 539-4700 • FAX 539-4703

Mark E. Recktenwald
CHIEF JUSTICE

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State of the Judiciary
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President Tsutsui, Speaker Say, Lt. Governor Schatz, members of the House and Senate, former Governor and Mrs. Waihee, former Governor Lingle, former Chief Justice Moon, fellow justices and judges, members of the Consular Corps, members of the Royal Order of Kamehameha, distinguished guests and friends, good morning and aloha.

On behalf of the Hawaii State Judiciary, I thank the legislature for giving me this opportunity to speak with you today. I am honored to deliver my first address to you as chief justice. We appreciate the support you have given us over the years, and look forward to working with you to further the cause of justice in our community. We also look forward to working with Governor Abercrombie and his administration.

There are many ways in which our three branches of government can collaborate to better serve the people of Hawaii. To that end, I will explain the challenges and opportunities we are facing, and our vision for the future, and respectfully ask for your support in making that vision a reality.

The judiciary is a strong institution, and it owes that strength to the contributions of many people. This past year, Hawaii lost two pre-eminent jurists, Chief Justice William S. Richardson, and Judge Samuel P. King. Judge King was a leader in the founding of our family court in the 1960s, before going on to a distinguished career as a federal judge. CJ Richardson was the heart and soul of the Hawaii judiciary, and was instrumental in shaping the modern

legal landscape in Hawaii. We are honored to have members of the King and Richardson families with us today. Could you please join me in acknowledging the contributions of these two extraordinary men.

Also, I wish to acknowledge the many contributions of my predecessor, Chief Justice Ronald Moon. Chief Justice Moon provided us with strong leadership while guiding the judiciary into the 21st century. We are honored to have him here today. Could you please join me in recognizing CJ Moon.

I'd like to address several issues with you this morning: our mission, our caseload, our programs, and our needs that have been impacted by the economic downturn.

Our core mission at the judiciary is to administer justice. We do this, primarily, by adjudicating cases, and doing so in a way that is fair, impartial, transparent, prompt, and respectful to the participants. But our role is not confined to deciding cases. Over the years, we have been given additional duties as well. We now play a role in addressing the problems that underlie those disputes, and in helping to alleviate their human impact. So whether it's supervising defendants on probation so they stay off drugs, or providing support to children whose parents are going through a divorce, or giving litigants the opportunity to resolve their disputes through alternative dispute resolution, the judiciary is asked to do much beyond simply deciding cases.

There is a common thread running through these broadened expectations. I believe it can be summed up as follows: our citizens want to be treated fairly and they want a justice system that works. They want a criminal justice system that reduces the risk that defendants will commit crimes again in the future. They want a family court system that supports our families when they are confronted with problems such as divorce, domestic violence or child abuse. And they want a civil justice system that resolves disputes in a timely and fair manner, and that is not so complex, expensive and time consuming, that few can afford it. Our citizens want justice that works.

Since I became chief justice just over four months ago, I have visited each judicial circuit to meet with our judges, staff, attorneys and the public, to find out how we are doing in meeting those expectations. I have encountered

great excitement about the work we are doing, and many good ideas to pursue in the future. Even though our staff and judges have been asked to make many sacrifices in recent years, they remain dedicated to our mission, and passionate about advancing the cause of justice in our community. I am deeply grateful for their professionalism, loyalty and commitment.

Nevertheless, there are substantial challenges facing us. These have been difficult economic times for all of Hawaii, and the judiciary has been no exception. In the last two years, our general fund appropriation was reduced by \$19.7 million, or more than 13%, while demand for our services has continued to increase. Two-day per month furloughs of judiciary employees, which were instituted in November 2009, have eliminated more than 600,000 available staff hours of work. These reductions in our resources have had substantial negative effects throughout the judicial system. They have reduced, delayed, and in some cases, eliminated important services.

Notably, Hawaii's families and most vulnerable citizens have been significantly impacted. The time it typically takes to process an uncontested divorce has doubled. The wait time for children to participate in the Kids First program in Kapolei, which provides support for children whose parents are going through a divorce, has more than doubled.

Justice has been delayed in civil cases as well. The number of pending civil cases in our district courts increased by almost 100% from FY2008 through FY2010. The number of civil cases filed in circuit court has increased by almost 20% over the last two fiscal years, particularly in those areas which are linked to the health of the economy, such as foreclosures. Not surprisingly, since the resources available to address that increased caseload have been reduced, the median age of pending civil cases in circuit court has increased by more than 40 percent. By prolonging the time it takes to resolve civil disputes, the cost and uncertainty of litigation increases, and our community's efforts at economic recovery are hindered.

The criminal justice system has also been adversely impacted. Twenty-four adult probation positions were eliminated in the first circuit, including positions in high risk areas such as the sex offender unit, and the domestic

violence unit. This has left individual probation officers supervising as many as 180 defendants, as opposed to the recommended national standard of not more than 120 defendants per officer. By stretching our probation officers too thin, we compromise their ability to protect the public and help probationers gain control over the problems, such as drug abuse, that landed them in trouble with the law. Having defendants successfully complete probation saves money for taxpayers in the long run, since the average cost of supervising a probationer is less than \$2 per day, while the cost of incarcerating an inmate is approximately \$137/day. It also helps to reduce the social and economic impacts associated with incarcerating Hawaii inmates on the mainland.

Adequately funding the state court system is an investment in justice, and an investment in our community, that should not be compromised even during tough economic times.

Justice is not something that should be rationed. The costs of attempting to do so will be far higher in the long run, than any savings that can be realized now. That's why the judiciary's proposed budget seeks funding to eliminate furloughs, and get our employees back to work full time beginning July 1st.

We are also asking for funding to address long-standing construction needs in our facilities across the state.

Here in Honolulu, we are asking for funds to help us address issues such as leaking roofs at circuit court, where this winter's heavy rains damaged computers and documents, and destroyed ceiling fixtures.

On the Big Island, we are asking for funding for design and land acquisition for a courthouse in Kona. Currently, we are holding court in three different facilities in Kona, none of which were designed as courthouses, including part of the Old Kona Hospital, where our law library is located in the former morgue. Moreover, the facilities we use to hold defendants in Kona are inadequate and raise safety concerns. For example, our pretrial holding area for district court defendants lacks toilets or drinking water, and defendants in custody must therefore use restrooms in the public areas of the courthouse. We respectfully ask for your approval of our funding request so we can address these

issues. The people of Kona deserve a courthouse that is secure, convenient and efficient.

Although the challenges I have mentioned are daunting, there is much positive news to report. The opening of the new Ronald T.Y. Moon Judiciary Complex in Kapolei, which houses the family court and our juvenile detention facility, has provided new focus to our efforts to serve children and families. The family court touches thousands of our families every year, often when they are at their most vulnerable. This new facility provides us with better tools to reduce the stress of that process.

Across the judiciary, there is a real commitment to finding more efficient and effective ways to serve the public. The HOPE probation program, which is based on the simple premise of holding probationers immediately accountable when they use drugs or fail to report to their probation officer, has achieved remarkable results. Positive drug tests have been reduced by 83% among participants in HOPE probation, while recidivism has been cut in half.

Hawaii has received widespread national recognition for these results, and other states have begun to adopt variations of the program. We are increasing the number of defendants in the program here on Oahu, and expanding its use on the neighbor islands. We have also begun discussions with Governor Abercrombie's administration about the feasibility of expanding the program to the pretrial and parole stages of adjudication.

While HOPE probation is an important tool in our efforts to break the cycle of drug dependence and crime, there are other critical programs as well. For defendants whose addictions are so deep-seated that the incentives provided by HOPE are not sufficient, the intensive treatment and supervision provided by drug court offers another important option. The combination of HOPE and drug court offers effective alternatives to incarceration at a fraction of the cost. In recognition of these facts, the legislature last year provided us with continued support for those programs. We deeply appreciate your support. We believe that the confidence shown by the legislature will be repaid many times over through lower costs and increased public safety.

Our other specialty court programs--such as mental health court, girls court, and juvenile drug court--continue to make great strides in addressing the needs of those specialized populations.

Indeed, they can have life-changing effects on the participants and those around them. One example of their success is Nellie Shy Mamuad. Nellie Shy has been involved in the family court system since she was 12 years old, and was a ward of the state. When Nellie Shy entered juvenile drug court in 2005 at age 16, she was using crystal methamphetamine and other drugs, and had been used by an older boyfriend to carry drugs between the islands.

Through juvenile drug court, Nellie Shy was able to complete her GED, and subsequently graduated with honors from community college. She is currently enrolled at the University of Hawaii - Hilo, where she is working toward a bachelor's degree in Social Work. Nellie Shy hopes to work with young people who have substance abuse problems.

She continues to remain clean and sober, and to strive for a better future for herself and her two young children. Nellie Shy is here with us today. Could you please join me in acknowledging her for her success?

In addition to programs such as HOPE probation and our specialty courts, the judiciary is looking for other ways to be more effective in our work. We are in the midst of a transformation in the way we conduct business, moving from primarily paper-based systems to electronic filing and processing. Our electronic case management system, called JIMS for short, has enabled us to address some long-standing, and seemingly intractable problems, such as delays in issuing bench warrants, and collecting traffic fines and assessments. The electronic bench warrant project received two national awards last year, and we have collected \$15 million for the general fund through the traffic collections system since it was implemented in 2007.

Just this fall, we expanded JIMS to include filings in our appellate courts. Attorneys and self-represented parties are now able to file appeals from their computers, at any time of day, and serve them on other parties who have consented to electronic service. In the years ahead we will bring electronic filing to the criminal courts, followed by the civil and then family courts.

In our civil courtrooms, we are looking for ways to streamline the litigation process without compromising the rights of parties. It has become increasingly costly and time consuming to take a case to trial. Indeed, in FY 2010, more than 5,000 civil cases were filed statewide in the circuit courts, but only 14 civil cases were tried to a jury verdict.

Although the relatively small number of civil cases going to trial is something we should continue to monitor, nevertheless the reality is that the vast majority of civil cases are going to be resolved by settlement. The judiciary has a long-standing commitment to providing opportunities for alternative dispute resolution, and I share in that commitment.

While the judiciary must by necessity focus on making the delivery of our services more efficient, at the same time we must remain true to the values reflected in the phrase "and justice for all." Many of Hawaii's low and moderate income families are unable to obtain the legal services that they need in the best of times, and the unmet need has become greater in these difficult economic conditions. The Access to Justice Hui concluded in 2007 that only about one in five low to moderate income Hawaii residents have their civil legal needs met. Things have gotten worse since then, with the downturn in our economy. There are many more people facing eviction, collections actions, foreclosure, loss of jobs or benefits, and related problems such as divorce or domestic violence. At the same time, state funding for legal service organizations has been sharply reduced.

As a result of the recommendations of the Hui, the Hawaii Supreme Court formed the Access to Justice Commission in 2008. The Commission has had a number of significant accomplishments, including the establishment of model pro bono policies, recommendations for rule amendments and legislation, and the development of a foreclosure mediation pilot project on the Big Island. Perhaps equally important, the commission has significantly increased the level of interest in access to justice in our community. There is real momentum now, which we cannot afford to lose.

The challenges posed by access to justice illustrate a fundamental truth about the judiciary--in order to solve the

many challenges we face, we must work collaboratively with other organizations and members of our community. We have a strong working relationship with the Hawaii State Bar Association, as well as the neighbor island bar associations, and with many other partners in our community, including the William S. Richardson School of Law, and the American Judicature Society.

We are blessed with a strong volunteer program, which contributed 39,000 hours to the judiciary in the past fiscal year. With us today is Mike Maeda, who contributed well over 12,000 volunteer hours during his 14 years of service to the judiciary, as well as Wayne Sakai and Susan Arakaki, who each contributed over 600 volunteer hours in FY 2010 alone. Please join me in recognizing these outstanding individuals.

In addition, the Judiciary would not be as effective as it is without our many other partners, who complement the work we do in many different ways. One example of such a partnership involves the program known as Lawakua. Lawakua uses martial arts training to teach discipline and teamwork to young people, and has chapters set up at Kuhio Park Terrace and Halawa Housing. Since 2005, Lawakua has sponsored a chapter at the Kalihi YMCA for teenage boys and girls who are participants in our juvenile drug court--a one-of-a-kind partnership anywhere in the nation. I have attended Lawakua's promotion ceremonies for the past three years, and have watched these young people grow and mature, in some cases winning scholarships and going on to college. We are honored to have with us today Matt Levi, the founder of Lawakua, as well as several current participants, graduates and instructors. Could you please join me in acknowledging them?

Although the judiciary must be completely independent and neutral when we decide cases, we must also engage the community in as many ways as possible to promote understanding of our constitution and our system of law. To further that goal, the supreme court has begun holding oral argument at different locations in the community, starting with Kapolei in December, and at the Richardson School of Law next month.

The judiciary also supports many civics education programs which benefit students, ranging from the Mock Trial and We The People competitions, to training for teachers in

issues related to the constitution. Programs such as these are critical to the future of our democracy.

During my remarks today, I have described the many challenges and opportunities facing the judiciary. As we move forward, we are fortunate to have the leadership of the extraordinarily talented and dedicated people who serve as judges here in Hawaii. Whatever the challenge--whether taking on a rapidly increasing caseload, or developing new ways to improve the justice system--our judges have answered the call. I thank them for their dedication, and their many contributions. I also congratulate Judge Sabrina McKenna on her nomination to the Supreme Court.

In closing, the role of the judiciary has evolved substantially over the years, from simply deciding cases to helping, in many instances, to address the underlying problems, and alleviate the impacts of those problems. We have embraced that broader role, and believe that we have done it well. But we need the resources to ensure that we live up to the public's high expectations for us, whether it be deciding cases promptly, or helping children cope with the trauma of divorce, or helping a probationer overcome a drug problem and reconnect with his family and community.

We know that there are many competing demands for our state's scarce resources, and that we cannot reasonably seek a greater share of those resources without first ensuring that our own house is in order, and that we are using the resources we do have in the most effective and efficient way possible. That is exactly what we have tried to do through initiatives such as HOPE probation and the JIMS system, and we will continue looking for more such initiatives in the years ahead.

Once again, I would like to thank the members of the legislature for inviting me here today, and for your continued support of the judiciary. On behalf of the judges and staff of the judiciary, and all of the people we serve, we look forward to working with you to further the cause of justice in Hawaii.

Thank you and aloha.