

State of the Judiciary
Chief Justice Ronald T. Y., Hawaii Supreme Court
Message to the Hawaii Legislature
January 27, 1998, in Honolulu, Hawaii

Governor and Mrs. Cayetano, President Mizuguchi, Speaker Souki, Lieutenant Governor Hirono, distinguished members of the Nineteenth Legislature, fellow Judges and Judiciary employees, former-Chief Justice Richardson, members of the federal bench, other special guests, ladies and gentlemen:

It is again a great honor and privilege to deliver my second State of the Judiciary address to a joint session of the Hawai'i State Legislature. Before I proceed, I want to thank the Legislature for its support of the Judiciary's budget requests and legislative proposals at the last session. Without your commitment, the Judiciary could not have achieved its many accomplishments, some of which I will share with you today.

Last year, a significant portion of my remarks addressed the basic, but critical principle that the Judiciary is a separate, independent, and equal branch of government. Over the past year, a course of events has unfolded nationally, and locally, that reflects a continuing misunderstanding of this basic principle of democratic governance.

Nationally, we have witnessed high level threats to impeach certain judges, as well as the targeting and defeat of elected judges, because of their unpopular decisions, emotional reactions to those decisions, or both. We have also seen proposed federal legislation to limit the authority and reach of the federal courts and congressional hearings on so-called judicial activism.

On the local front, a concerned legislator invited me to participate in a summit on the public's reactions to certain court decisions, apparently hoping that the experience would, or should, cause the court to rethink certain judicial decisions and perhaps even persuade the court to accommodate current public sentiment on certain issues. This invitation, coupled with what's been happening on the national front, exemplifies the serious misunderstandings about the judicial process and its role in our representative government — one that successfully blends majority will, the rule of law, and protection of the rights of those who are out of political favor or are otherwise classified as minorities. If we are to maintain the delicate balance in our law and the even more delicate relationship between our respective branches, it is imperative that we correct any misunderstandings about the judicial decision-making process. Thus, I would like to revisit the issue of judicial independence again this year, specifically as it relates to the decision-making process.

Independent judicial decision-making does not mean that judges may do as they please, based on whim, personal preference, or even majority will. Although the majority's will is the driving force in the legislative process and is appropriate for legislators to consider when deciding public policy issues, it cannot and should not be considered by judges when deciding disputes. Judicial decisions are the result of a structured, analytical process based on traditional principles. These principles allow all parties to present evidence and argument about the law and its application to a particular dispute in a forum that is free from any influence other than the evidence, the law,

and the advocacy of the parties. These principles are as old as this nation and as necessary to freedom as the individual rights set forth in our federal and state constitutions. They have made our legal system a model of fairness that is emulated by all who cherish liberty.

While we judges must keep in mind that our decisions will affect the lives of the individuals who appear before us, we are obliged to set aside our emotions and concerns about our popularity and render our decisions based on the facts in evidence and the laws in effect at the time. Over the years, and most especially in recent years, the Hawai`i State Judiciary has been called upon to rule on several controversial cases, and, at times, public criticism has been severe. Please — don't misunderstand me — I am not saying that criticizing judges or their rulings is wrong. On the contrary, criticism that is constructive and reasoned, based in fact and law, is appropriate and useful, particularly to the Judicial Selection Commission when it assesses judges seeking retention. However, when judges are perceived as formulating their decisions in response to political pressure or the perceived majority opinion of the moment, our system of government is placed in serious jeopardy. Judges must be free to rule in accordance with the law, and we must be able to make decisions without fear of reprisal, especially when the law requires a decision that is viewed as against the public will. Courts, in stark contrast to the Legislative and Executive Branches, are not, and indeed must not, be beholden to the will of the majority. The majority's will has no place in the judicial process for the simple reasons, among others, that the populace does not hear all of the evidence and does not view the law in the context of the specific events at issue.

Imagine, if you will, a judge inviting interested members of the general public to cast "yes" or "no" votes by calling a 1-800 number and pressing number one or number two on a touch tone telephone, then ruling in accordance with the desires of the voting majority. This, ladies and gentlemen, is my nightmare; and, I submit, your nightmare, and, ultimately, the nightmare for your constituents. When the judiciary rises above partisan politics and is not swayed by the political passions of the moment, justice prevails — one classical example being the case of *Brown v. Board of Education* which abolished school segregation.

It is necessary that the Judiciary, the Executive, and the Legislature work together to maintain public confidence in our judicial system by addressing popular misconceptions of the courts because, without public confidence in an independent Judiciary, court orders and judgments would be rendered meaningless, legislative intent would be undermined, chaos would reign, and our system of government would surely deteriorate. I therefore see us engaged in a mutual quest for excellence in government — a quest that includes improving the law and the overall administration of our system of justice.

Last year, I believe the Legislature took positive steps in this quest for excellence with the passage of a judicial salary bill. On behalf of all of our judges, I sincerely thank you — the members of the Legislature — for your efforts and support. Indeed, we were profoundly disappointed that the bill did not become law.

Additionally, last year, you adopted a concurrent resolution, directing the Legislative Reference Bureau to study and make recommendations regarding an appropriate salary structure for all state judges. Senate Concurrent Resolution No. 2 sets forth two basic assumptions. First, because

of the absence of an objective, statutorily established mechanism that ensures fair and adequate compensation, Hawai`i's judges are continuously drawn into the potentially compromising task of lobbying the Legislature for salary increases and improvements in benefits; and, second, such lobbying is inconsistent with the traditional role of the courts as an independent and separate branch of government.

In its report issued two weeks ago, the Legislative Reference Bureau recognized the subtle, but critical, fact that “the pay issue extends beyond the connection between compensation and judicial excellence, striking at the very heart of judicial independence.” The Bureau’s report, at pages 34 and 35, explains that, “[t]he danger posed by inadequate compensation to the judiciary’s independence is real indeed. [A]bsent specific constitutional authority, one branch of government may not be controlled by, subjected either directly or indirectly to the coercive influences of, or even embarrassed by another branch of government. It may be arguable that the failure of the legislative or executive branch to provide fair and reasonable judicial compensation is an indirect attempt to control, influence, or embarrass the Judiciary and, as such, constitutes a menace to judicial independence.”

The Legislative Reference Bureau as well as the Judicial Salary Commission — both impartial, non-partisan bodies — have concluded, independently, that Hawai`i's judges are significantly underpaid when compared to federal and other state judges. The Bureau’s report notes that, since the last increase in 1990, judges’ purchasing power has decreased by 25% as a result of inflation and the rising cost of living, and, that, since 1992, nine seasoned and experienced judges have left the bench. Within the last few weeks, a 58-year-old judge, with over 13 years of experience, advised me that, although he loves his job, he, too, will be leaving in the next few months for a higher paying position. Ladies and gentlemen — no one attains excellence in the art of judging overnight. Losing judges far-before retirement age is truly a waste of valuable assets, especially after having invested substantial amounts of time and monies in their training, and, after years of hands-on experience.

Why are judges passed over year after year, while virtually all other government employees have received multiple increases in their compensation during the same period? The answer, I submit, is obvious — the Judiciary is the weakest branch of government. Judges number only seventy-three and are bound by the Code of Judicial Conduct. They cannot participate in politics; they cannot unionize; they cannot strike; and they cannot — no, they will not — consider political consequences of their decisions in the hope of receiving favorable legislative or executive action. As a result of going eight years without a pay increase, some may be left wondering whether applying the strict principles of judging in any particular case will mean another year without a raise. It comes as no surprise that one federal judge on the mainland has, in fact, publicly stated that he knew it was time to resign when he found himself, for the first time in his judicial career, considering the political implications of his rulings. Our judges recognize, all too well, the economic realities of the day; however, as I said last year and I emphasize today — “fairness alone dictates that a judicial pay raise is appropriate.” The Legislative Reference Bureau agrees. Among other actions, the Bureau recommends that the legislature again enact a judicial salary increase as proposed in last year’s House Bill No. 1393, C.D. 1. With respect to judges’ retirement benefits, the Bureau concluded that any steps towards adjusting such benefits should

be preceded by a comprehensive review by qualified retirement-benefit specialists. I once again request your support and favorable consideration of this critical issue.

Improving the public's confidence in the judicial process by their understanding of the Judiciary's role and function is, in large part, the responsibility of the Judiciary. I believe the Judiciary is meeting its part of that responsibility.

The Judiciary has initiated programs designed to inform and educate the public about the workings of their state court system. These programs operate at no additional cost to the taxpayers and target many segments of our community, including elementary, intermediate, and high school students, law students, the public at large, and you, our legislators. Examples include: the Judges Speakers Bureau, the Afternoon with a Judge Program, the Lunch 'N Learn the Law series, and the Legislators' Day-in-Court.

Last year, you opened some juvenile proceedings and case records to the public. In the spirit of that law, and in an unprecedented effort to increase public understanding about the juvenile justice system, the Judiciary recently granted two major daily newspapers access to Family Court juvenile proceedings and case records usually kept confidential. We believe that, by allowing these journalists to observe first-hand what goes on in a system historically shrouded in secrecy, the public would develop a better understanding of the complexity of the issues that are brought before us and the daily struggles facing our judges, staff, and families, as well as help to identify those areas needing reform.

We continue to work to establish better rapport between our employees and the public because we firmly believe that confidence in the courts is enhanced when the public is served courteously, promptly, and efficiently. To that end, our Judicial Education Division has developed and is conducting training in these areas. In the past year, more than half of the Judiciary's entire work force has participated in such training.

We also recognize that the public — as the users of the judicial system — are in a position to help us identify problem areas. We therefore intend to systematically gather statewide public input through a variety of methods, including town hall meetings, focus groups, and exit surveys. No such effort has ever been initiated by the Judiciary. The input we receive from your constituents will assist us in assessing changes to improve the system.

Adequate resources, however, are often required to implement changes to improve the system. We are fortunate to have been awarded federal grants that have been used to: (1) establish a court-based educational outpatient treatment program for adult misdemeanants; (2) improve the litigation process on behalf of children in foster care and adoption proceedings; (3) expand the family visitation program to include non-custodial fathers; (4) enable state courts to conduct video arraignment and plea hearings; and (5) provide statewide training in domestic violence for judges and probation officers. These grants save state general fund appropriations and allow the Judiciary to undertake innovative approaches to improve court operations.

The Judiciary also continues to search for alternative methods to manage its growing caseload, without expending additional costs. And, although we are currently doing relatively well, there are certain areas that are in critical need of your support.

Last year, I noted that the Supreme Court had implemented emergency measures to deal with the growing appellate backlog. These emergency measures, most notably the use of summary dispositions, / that is, a brief statement or order setting forth our decision, are enabling the appellate courts to enter more timely dispositions and reduce the backlog of appeals. Between September 1996, and November 1997, we reduced the number of pending appeals by 490 cases. This is significant progress. We plan to continue to use this valuable tool as it assists us in moving closer to our goal of resolving more appeals within one year.

I am also pleased to report that our circuit court's criminal and civil caseloads are presently at relatively manageable levels due to the tireless efforts of our judges, both full-time and per diem, and their support staff. In order to achieve these current levels, however, we have had to shuffle our judges around to handle critical situations in certain areas. For example, in June of 1997, we faced a very serious backlog of domestic violence cases caused by the increase in demands for jury trials. In order to handle the 372 domestic violence jury trial cases pending at that time, I established a temporary First Circuit Family Court trial division, but had to "borrow" a much-needed criminal circuit judge to staff the temporary division. With the assistance of the temporary division, the number of pending domestic violence jury cases dropped from 372 to 139 as of December 1997.

Although yielding positive results, moving judges around to handle such critical situations is a band-aid solution and analogous to turning one's attention away from one fire to put out a bigger fire. Upon returning to the original fire, it is burning out of control. We simply cannot continue to just keep "putting out fires." We need more judges.

Over the past four years, our criminal caseload in the Circuit Courts has increased by over four hundred cases. Civil filings are increasing at a more modest rate, except for foreclosure actions, which have increased by more than 30% just in the last year. These circuit court increases are significant as they actually represent the annual work of, at least, one additional judge. At the family court level, the number of filings have steadily increased since 1993, which means that our judges can reasonably expect to have a perennial backlog of cases year after year. Moreover, in addition to "borrowing" a circuit judge to handle domestic violence jury cases, we have also had to regularly call upon our per diem judges for assistance.

With the growing criminal, civil, and family court caseloads, our judges, despite their most diligent efforts, cannot prevent the backlog and accompanying delays in resolving your constituents' cases from increasing without additional help. Justice delayed is justice denied. Consequently, we are asking that funds for two additional judges and attendant staff be appropriated to the Family Court of the First Circuit.

We continue to emphasize the importance of children and family as demonstrated by the various programs and projects currently ongoing within the family court. For example, this past year, the juvenile division of the Family Court introduced a "one judge/one family" initiative in which the

same judge in child abuse cases handles all matters pertaining to a particular family. We are encouraged by the results — as families and children benefit from the court’s more comprehensive, intimate knowledge of the issues and factors affecting that particular family. As a direct result of this initiative, the number of children in foster custody has decreased by 20%, while the number of children eligible for adoption has increased by 25 percent.

Thanks to the bill that you passed last year, the Judiciary now collects a \$35 surcharge from parents who file for divorce or separation. These monies support the family court’s statewide Kids First Program, which teaches parents how to minimize the negative effects of divorce on their children. We are indeed proud of the fact that an American Bar Association committee has selected Hawai`i’s Kids First Program as one of 25 projects across the country that “Makes a Difference in a Child’s Life.”

At the district court level, our judges continue to see the great majority of individuals who pass through our court system. Over the past five years, we have averaged approximately 24,500 civil cases a year in the District Courts throughout the State. In the criminal area, roughly 46,000 criminal cases were filed last fiscal year. To give you a sense of the growth in these numbers, this represents a 35% from 1987. Even in the traffic division, the trend is turning upward, where our filings for the last fiscal year increased by approximately 25 percent.

We are working with the National Center for State Courts to determine how we can better and more efficiently handle the enormous number of cases filed in our district courts each year.

In addition to the growing number of cases, we are also experiencing, at all court levels, a growing number of court users who are representing themselves or are non-English speaking. The increase in litigants representing themselves is consistent with the national trend, but is even more prevalent in Hawai`i because of our economic downturn. The Judiciary is addressing this situation through public education — in both English and other languages — as well as by simplifying court procedures.

We have produced two videos that will air regularly on public access channels and be available in public libraries. These videos, focus on our small claims and traffic courts, explain court options and procedures step by step in language that is understandable to the lay person. In the future, the videos will also be closed-captioned for the hearing impaired as well as dubbed in additional languages.

We are also simplifying court forms and expanding the number of information packets that are available to the public to assist them with the various types of family and district court proceedings. As we plan to do with our District Court videos, we hope to expand these educational materials to other languages.

In the courtroom environment, we must depend on court interpreters to assist us in administering justice because justice surely cannot be served if, for example, a non-English speaking defendant says, in his own language: “I was so mad that I COULD have killed him,” and the interpreter translates: “I was so mad that I killed him.” Thus, we have made the court interpreter issue a priority within the Judiciary. In the last twelve months, we implemented a statewide interpreter

registration process and held a series of two-day orientation sessions that reached over two hundred interpreters. As the result of a judges' workshop, as well as one for staff, the Judiciary is more aware of and better able to handle cases involving interpreters.

The Judiciary has stretched existing resources to accomplish much over the past year in this area; however, an interpreter certification program cannot be created and maintained without additional help. Last year, you responded to our request by authorizing a court interpreter coordinator position. This year, we hope you will join in our efforts to service our growing non-English speaking population by funding this position so that this important work may continue.

The Judiciary continues to: (1) promote alternative dispute resolution or ADR options at every level of our courts; (2) assist in the development of programs in other government sectors; and (3) educate our young people regarding such options.

As I shared with you in my address last year, our appellate mediation program has been quite successful, with approximately 50% of the cases referred to it being settled, — either in full or in part. Unfortunately, over a two-and-a-half year period, only 135 cases have been referred to this program due to the lack of a full-time program administrator. We believe that a full-time administrator is critical, if we are to maximize the potential of this important dispute resolution program. We are therefore seeking your support to fund an administrator position for the appellate mediation program.

Also, this past year, the Judiciary, together with the Hawai'i State Bar Association, began the School Mediator-Mentor Program — a program designed to promote a culture of personal responsibility and peaceful problem-solving among Hawai'i's youth. Volunteers, many of them attorneys, serve as mentors to student peer mediation programs at twenty-two schools. The volunteers also mediate adult school-based disputes and coordinate workshops for parents, teachers, administrators, and students. By providing Hawai'i's youth with peaceful problem-solving tools, we hope to pave the way for future generations to be less litigious, more responsible, and better oriented toward resolving disputes, without violence or costly litigation.

In October of 1997, a local newspaper and television station conducted a survey on making our community a better place to live. When asked the question, "How much improvement do you think is needed in Hawai'i with respect to 13 different areas?" — which included the economy, education, and the environment — drug abuse ranked number one, and public safety ranked number four. Both issues are tied directly to the business of our courts.

I am pleased to report that, thus far, the Drug Court's success has surpassed all initial expectations. Since its inception, Drug Court has processed approximately 210 individuals with more than 400 criminal cases among them. The average daily cost of Drug Court is \$14 per participant compared to \$79 for incarceration. To date, only 18% have failed the program, and forty participants have graduated, with only two having been charged with new criminal offenses.

Without the Legislature's funding, many Drug Court participants would not have had the incentive, guidance, or support to kick their habits and become productive members of our

community. On behalf of the Judiciary, and on behalf of these participants and their families, I thank you for your support.

Because of Drug Court's success on O`ahu, we are now looking at expanding the program to Maui, where drug use is also a growing community problem. I hope that we can count on the Legislature's continued support for this exciting, successful, and innovative program. I turn now to the issue of public safety. Judging by recent media reports regarding the serious problem of prison overcrowding and the possibility that prisoners may have to be released, I suspect that the fourth place ranking in the October 1997 survey — if taken today — would be higher. The issue of prison overcrowding is not new and is not one that will be easily solved, especially in these difficult economic times. And, therefore, yesterday, I was pleased to hear the Governor's proposal to build a new prison.

The Judiciary, in attempting to assist in addressing this long-standing problem, continues to explore alternative sentencing procedures to the extent we can do so within the bounds of the current law. As you may know, since October 1996, one of the Circuit Court trial divisions on Maui has offered defendants the option of "sign holding" instead of incarceration. Essentially, defendants who select this option are required to hold a sign and wear a name tag along the roadside for four hours, four days per week. They must follow written terms and conditions set by the judge. The option is limited to offenders whose sentence includes probation. Offenders given prison sentences are not eligible.

Public response has been very positive, and our statistics show a lower rate of recidivism among defendants willing to publicly acknowledge their wrongdoing. During the one year of the program's operation, we estimate the savings in prison costs to the State to be approximately \$372,000. It is a "win-win" situation where the sentences have the desired punitive effect and help to reform the defendant, while avoiding the expense of incarceration.

Respect for the judicial system and confidence in its procedures are also products of a secure courthouse environment. Certainly, we cannot expect the public to have confidence in the Judiciary — if people do not feel safe in our courts.

Experience has shown that no court is immune to violence by virtue of its size or its geographic location. Across the country, and here in Hawai`i, court security has moved to the top of the list of concerns. The Hawai`i State Judiciary has had more bomb threats on O`ahu in the last two years than we have had in the past ten years. Just this past year: (1) a pipe bomb was brought into the Ewa District Court; (2) a press photographer was assaulted on Maui's court premises; (3) the Hilo District Court building was broken into and the safe stolen; and, (4) there were several fights on court premises that required deputy sheriffs to intervene. These bomb threats and acts of violence resulted in evacuations of court facilities and lengthy interruptions in the delivery of court services. More importantly, they endangered the public and public employees and threatened the public's confidence in our ability to protect them on court property.

With your help, we have taken steps to address the security concerns. In the last two years, we have purchased X-ray machines, metal detectors, and hand-held scanners for a number of court buildings. Unfortunately, the Department of Public Safety has not had enough deputy sheriffs to

operate all of this equipment. Consequently, the Judiciary has had to hire private security guards. This session, we are seeking appropriations for additional private security guard positions for our rural and neighbor island courts. We are also seeking appropriations for surveillance cameras to replace outdated equipment at the District Court.

These measures, however, do not address all of our security needs. Effective court security requires specialized security staffing by deputy sheriffs. At present, we are far below the adequate sheriff staffing level. In short, the Judiciary needs additional deputy sheriff positions funded for the Sheriff's Division in the Department of Public Safety.

Ladies and gentlemen — the Judiciary recognizes that it must do its part to address the ever-increasing budget shortfall. The State Auditor recently acknowledged our efforts in the past few years to increase the collections of fines and restitution. The Auditor also identified ways we can further improve our collections. We take the Auditor's recommendations seriously, and, although we have already begun to take additional steps, certain of our initiatives will require legislative action. With your support, we will continue to make progress and help add to the State's general revenues.

As for our 1998-99 budget request, we are seeking an estimated 91.6 million dollars. Although our budget request is approximately one million dollars less than our current legislative appropriation, \$91.6 million is indeed a lot of money. But, I ask you to keep the Judiciary's budget in proper perspective by taking note of the fact that, since fiscal year 1990, the Judiciary's total share of the State pie has remained at less than 3 percent. Further, despite the fact that, over the past two years, the Judiciary's workforce has been reduced by 7%, or 131 fewer Judiciary employees, we continue to seek ways to maximize the precious dollars you appropriate to us.

Moreover, in full cooperation with the Governor's recent efforts, I have ordered a Judiciary hiring freeze and placed severe limits on out-of-state travel, overtime, and training. I have also directed Judiciary officials to study and consider recommending additional reforms, including a reduction in operating expenses, withdrawing certain of our budget requests, and more systemic changes, such as combining programs, job sharing, and a 10-hour work day/4-day work week. Again, the Judiciary is fully aware that it has the identical responsibility as the Legislative and Executive Branches to take affirmative steps to address our economic concerns. However, it is apparent that, unless you are able to help us in those critical areas I've mentioned, we will simply have too few resources to serve your constituents.

It is equally apparent that the Judiciary's workforce needs sufficient space in order to operate efficiently. Space has become a critical issue for the Judiciary across the state. I want to reaffirm my commitment to the Family Court Center and the Juvenile Detention Center at Kapolei. We thank you for your support last session regarding this project, and we ask for your further support this session to include the Judiciary in the statutory provisions relating to financing agreements. By allowing the Judiciary, like the Executive Branch, to enter into creative financing arrangements for major construction projects, the State can preserve scarce capital improvements project monies.

Ladies and gentlemen — the state of the Judiciary remains sound, — but it is fragile. Although we judges must remain independent in our decision-making in order to adhere to our constitutional responsibilities and obligations, the Judiciary is wholly dependent upon you to strengthen its infrastructure in order to maintain the concept of three separate, independent, co-equal branches of government. Without your help, our form of government with its built in system of checks and balances will surely fail.

I thank the leadership and members of the Nineteenth Legislature for giving me the opportunity and honor of addressing you today on behalf of all of the employees of the Judiciary. We look forward to working with you to help maintain a justice system for the people of Hawaii of which we all can be justifiably proud. Mahalo.