

State of the Judiciary
Chief Justice Mark E. Recktenwald, Hawaii Supreme Court
Message to the Hawaii Legislature
January 25, 2017, in Honolulu, Hawaii

President Kouchi, Speaker Souki, Governor and Mrs. Ige, members of the Senate and House, Governor and Mrs. Ariyoshi, Governor Waihe'e, Governor and Mrs. Cayetano, Chief Justice Moon, my fellow justices, judges and Judiciary staff, members of the Consular Corps, members of the Royal Order of Kamehameha, distinguished guests and friends, good morning, and aloha.

I note with sadness the recent passing of Representative Clift Tsuji, who always made time to honor those attorneys who provide volunteer legal assistance to the community. We will forever miss his warm presence in the House.

I thank the Legislature for its strong support of the Judiciary. We are grateful to all of you for funding construction of a new courthouse in Kona. More than 200 people came to the groundbreaking in October--the pride in the community was overwhelming. When that courthouse opens in 2019, it will provide the people of West Hawai'i with a modern, efficient, and secure place for obtaining justice.

I also thank Governor Ige for his strong support of the Kona courthouse, as well as for the Judiciary's efforts to increase access to our civil justice system.

I deeply appreciate this opportunity to report to the Legislature and the public. We live in times of uncertainty, when people are rightfully asking tough questions. How are we ensuring that their voices will be heard? What are we doing to address the profound problems--such as public safety, homelessness, and drug abuse--that face us as a community?

No one knows exactly what the future holds. What we do know is that there will be tough questions along the way. There will be different visions of what Hawai'i is, and can be, and there will be divergent interests that will come into conflict.

That's where the Judiciary comes in. We provide the forum where people can obtain a just and fair resolution of their disputes.

In performing our mission of deciding cases, we affect and touch the lives of virtually everyone in our community. The broad range of matters that come to our courts for resolution include criminal prosecutions, and disputes involving family relationships and children, the environment, land use, civil rights, employment, personal injury, collective bargaining, and business relations, among others.

Our ability to perform that role comes from one thing, and *only* one thing: the public's trust in our integrity and impartiality.

People must know that they will get a fair shake in our courts, whatever their background or economic status, and even if their views are not popular or shared by the majority.

Essential to our ability to decide cases fairly and impartially is the principle of judicial independence. This is a critical part of the separation of powers that is fundamental to our democracy.

Judicial independence does not mean that judges are free to decide cases however they may want. To the contrary, they must follow the rule of law, and faithfully apply the constitutions and laws of the United States and Hawai'i to the facts of each case.

Judicial independence does mean that judges are able to decide cases impartially--free from passion, pressure, or outside influence. Only then can we expect the public to have confidence and trust in our decisions.

We must earn that trust every day. I am honored to be here this morning to share with you how we are doing so.

A Fair and Transparent Forum for Resolving Disputes

One of the most fundamental roles of the courts is to ensure the safety and well-being of our community. We do that in many different ways. First and foremost, we provide a fair and transparent forum for the peaceful resolution of disputes. We do a lot of that: in this past fiscal year alone, more than 100,000 cases were filed in Hawaii's courts, along with hundreds of thousands of traffic and parking citations. I am grateful to our eighty-two full time judges, many of whom are here today, and our dedicated staff who strive to ensure that everyone is treated with fairness and respect when they come before our courts.

We make every effort to enable parties to reach a resolution on their own. Mediation helps parties avoid the cost of litigating in court, can result in quicker resolutions, and helps to preserve relationships. The Judiciary provides free mediation services for ALL small claims and residential landlord-tenant cases statewide.

Despite the availability of mediation, there are nevertheless parts of the state with significant increases in demand for our services. For example, on Maui, the last district court judge was added in 1982, when the population was less than half of what it is today. In the past five years alone, criminal case filings in Maui County have increased by fifty percent, significantly increasing the workload of each judge. Accordingly, we are respectfully requesting funding for an additional district court judge position on Maui, as well as family court judges on O'ahu and Kaua'i.

When a dispute does go to court, it is essential that it be decided in a way that is transparent. The media are welcome to bring cameras into most courtrooms. And all of our appellate court decisions are available online, along with many other court records. Simply put, the rule of law is best nurtured in the sunshine.

But for all of the audiences that we strive to reach, there is one that is closest to our hearts: our young people. Our future depends on their understanding of our democracy and the constitution.

Yet there are so many issues competing for the attention of our youth—how do we get them to focus on this one.

The best way to make the judicial process real for our young people is to have them witness it firsthand. The Hawai'i Supreme Court has been traveling to high schools across the state, holding oral arguments in actual cases, in what we call the Courts in the Community program. Hundreds of attorneys have volunteered their time to join teachers in educating the students about the case that will be argued.

So far, the Supreme Court has convened at eight schools on O'ahu and the neighbor islands, most recently at Wai'anae and McKinley High Schools. Nearly 2,800 students from 51 schools have participated, including students from Ka'u to Ni'ihau. We are excited to continue this unique educational opportunity, and will be visiting Maui in April.

Increasing Access to Justice

If we expect the public to trust the judicial system, we must provide a level playing field in our courts. Nowhere is this need more acute than in our civil courtrooms, where thousands of people must represent themselves each year because they cannot afford a lawyer.

Going to court can be difficult, even under the best of circumstances. Imagine how it feels for a nineteen-year-old domestic violence survivor to stand alone before the court to confront the alleged abuser and seek a restraining order.

How do we ensure that every person has their day in court? Partnerships and innovation have been the key. Our Access to Justice Commission, under the leadership of its chair, Justice Simeon Acoba, has achieved amazing things with very limited resources:

- Self-help centers are successfully operating in courthouses from Hilo to Līhu'e, where volunteer attorneys provide information to individuals representing themselves in civil cases. Nearly 15,000 people have been assisted free of charge since the first center opened in 2011, at almost no cost to the public.
- Volunteer attorneys are assisting self-represented parties on appeal where the issues can be particularly complex.
- We are utilizing digital resources to reach even more people. In October, Volunteer Legal Services of Hawai'i rolled out a program called Hawai'i On-Line Pro Bono, where people can ask legal questions on-line and obtain answers from volunteer attorneys.
- The Legal Aid Society of Hawai'i has developed an interactive software program that generates legal documents to file with the court. This resource is available on our website, and on public computers at Hawai'i State Public Library locations statewide.

These efforts have received national recognition. In 2016, the Justice Index survey ranked Hawai'i among the top three states in the country for practices that provide access to justice.

We were also ranked number one for providing support for people with limited English proficiency--another area in which the Legislature has provided vitally needed resources.

Because of Hawaii's established track record, we were recently awarded a \$100,000 grant to develop a roadmap for further expanding access to justice.

We appreciate the Legislature's strong support of these efforts, including providing additional funding last session for civil legal services. Such funding makes economic sense--a recent study showed that for every dollar spent on civil legal services in Hawai'i, more than \$6 is returned to the economy.

We also thank our other partners: the Access to Justice Commission, the Hawai'i Justice Foundation, the Hawai'i State Bar Association, including President Nadine Ando and Executive Director Pat Mau-Shimizu, the neighbor island bar associations, the William S. Richardson School of Law and its Dean, Avi Soifer, our civil legal service providers and their incredibly hardworking staff, and the hundreds of attorneys who have generously donated their time and expertise.

Many of these partners are here today, and I would like to ask them to stand and be recognized.

Protecting Families and Children

Strong families are the foundation of a safe, vibrant community, and when families break down, the effects can be profound, particularly for children. Our family courts see that every day in cases involving divorce and child custody, domestic violence, juvenile offenses, and abuse and neglect of children. And the volume is staggering--last fiscal year, there were more than 27,000 new cases filed in our family courts.

You might think that family court would be a dark place, but in fact it is often a place of hope, innovation, and new beginnings. For example, our Girls Court program, which addresses the unique needs of teenage girls in the juvenile justice system, was one of the first in the nation. Girls Court significantly reduced recidivism, and we recently expanded it to Kaua'i. And, with the support of the Legislative and Executive Branches, we are pushing ahead with reforming our juvenile justice system by emphasizing more treatment for kids with substance abuse or mental health issues, and by increasing accountability by having juvenile offenders perform community service and make restitution to victims.

We all know that education is the key to a brighter future, but there are schools where too many kids are chronically truant. Our Family Court worked with partners in the community to come up with solutions.

We learned that cases of chronic truancy weren't making their way to the courts until the school year was almost over, that there are root causes, such as medical issues, that can be addressed, and that a team approach could be effective, particularly when parents become active partners in their children's success.

We put these principles into practice last year at Wai'anae Intermediate School, which had the highest rate of truancy among middle schools on O'ahu. Of the 63 students in the program, most had missed more than three months of the prior school year. The results were amazing. Seventy-eight percent of those students completed the school year with less than ten unexcused absences.

The statistics are impressive, but let me put it in human terms. One young man was living with his family in a tent, and had not been attending school for two years. Some of the challenges he faced were heartbreakingly simple--for example, he often didn't have dry clothes to wear to school.

The Department of Education and other partners stepped up to address those issues. This young man began going to school again, and earned a promotion to the next grade on merit. We recognized his success by awarding him some donated movie passes. It turned out that it was the first time that he had ever been to the movies, and it was the first time that people at Family Court had seen him smile.

That smile is what hope looks like. To the members of our community who are cynical about government and wonder whether it is up to the task of addressing our most intractable problems, I'd simply say this--come on down to family court.

I'd like to acknowledge the team that made this happen, including Family Court and partners from the Department of Education and the Offices of the Attorney General and Public Defender. Could you please stand and be recognized?

A Lasting Resolution to Disputes

As our experience at Wai'anae Intermediate illustrates, we sometimes have a role that goes beyond what takes place inside the courtroom. Simply put, it's not enough to hit the gavel and walk off the bench, if that means losing an opportunity to bring about a more *lasting* resolution.

We have done this successfully in addressing illegal drug use and addiction, through the creation of drug courts. The court intensively supervises each defendant in the community, with the goal of getting them clean, sober, and employed or in school, through a treatment team that includes prosecutors, defense counsel, drug counselors, and probation officers.

Drug court costs substantially less than incarceration--\$25 a day versus about \$140 for prison--and the graduates are far less likely to commit additional crimes. With the State considering construction of a new jail, it is important to determine whether the expanded use of drug courts could reduce the size of such a facility, while increasing public safety. A task force chaired by my colleague, Justice Michael Wilson, is considering that issue, among others, and I appreciate their work.

We have extended the treatment court model to different contexts. We have a pilot Driving While Impaired Court for chronic drunk drivers, which received national recognition and has *zero* recidivism among the first thirty-four graduates. We also have a Mental Health Court for

individuals with severe mental illness. And we have HOPE Probation, which uses a lower level of supervision while still holding defendants accountable for becoming clean and sober.

We have taken the treatment court model to a new level with Veterans Treatment Courts, which address the special challenges faced by veterans who have substance abuse or mental health issues. Under the leadership of Judge Edward Kubo, the Veterans Administration has been made a part of the treatment team, to ensure that the vets receive the VA benefits that they earned through their service. This brings in additional federal funds that were previously being left on the table. And, we have established a team of mentors: fellow veterans who can assist the vet with anything from advice to helping them obtain housing.

One of the veterans succinctly explained the significance of Veterans Court when he graduated from the program two weeks ago. He explained that before the program, he was addicted to drugs, was on welfare, and was in public housing. Now, he has a job and an apartment, and, in his words, is living on his own two feet. He said, "Before, I hurt people. Today I don't hurt people, I help people."

Given the success of Veterans Court here on O'ahu, we are bringing it to other parts of the state. We now have Veterans Courts in Kona and Hilo, a special calendar for veterans on Maui, and we will be opening a Veterans Court on Kaua'i this year. I'd like to recognize all of the mentors here today, both for serving our country, and for supporting their fellow veterans. Could you please stand?

Homelessness

There is another seemingly intractable problem that affects the health, safety, and wellbeing of our community: homelessness. Although the Judiciary cannot solve this problem by itself, it can be a part of the solution, by bringing people together to address some of the root causes.

For people who are unable to pay their rent, our district court's landlord-tenant calendar is often the last stop before the street. Sometimes, there is a possible solution that can keep the tenant in the unit, and be a win for the landlord as well. To facilitate those positive outcomes, we launched a program in Honolulu that brought together the State, the City, landlords, private attorneys, Legal Aid, and nonprofit organizations, which we call Steps to Avoid Eviction (STAE). This initiative was recently expanded to Maui.

Some homeless individuals repeatedly come through our district courts, arrested on minor offenses and held for a couple of days, building up unpaid fines or outstanding warrants that can keep them from obtaining gainful employment. In order to break this pattern, we must treat these encounters as opportunities to bring about change.

I want to commend Honolulu Prosecutor Keith Kaneshiro and state Public Defender Jack Tonaki for putting these ideas into action through a program called Community Outreach Courts. The ultimate goal is to send the court and a treatment team out into the community, and offer these individuals an opportunity to resolve pending cases, obtain needed services, and move forward in their lives. The Prosecuting Attorney obtained grant funding to start their project, and the first

session of this court will be held tomorrow.

We also provide services to homeless individuals who commit more serious crimes. Our treatment courts work to get a roof over their heads, and help them develop a support structure and the skills to stay off the street. We are asking for additional funding to support these efforts.

Future Challenges and Enduring Values

I'd like to talk about the challenges of the future, and the values that will guide us.

Our courts will face challenging environmental issues in the years ahead. We are well positioned to address those issues in a consistent, informed manner, thanks to the Legislature's decision to create the Environmental Court in 2015. We are only the second state in the nation to have a statewide environmental court.

We view technology as an opportunity to make the courts more transparent, more accessible and more responsive. We are moving away from conducting business on paper. On Monday, we rolled out a new system in our circuit courtrooms that handle criminal cases so documents in criminal cases can now be filed and accessed electronically.

We are also working to make it easier to obtain information about the Judiciary. We just launched a free Judiciary mobile app that provides quick access to a wealth of information about our courts. It is called Hawai'i Courts Mobile App, and we are only the second statewide judiciary in the country to offer this service.

Although we are embracing changing technology, we must remain true to those core values that provide our foundation as an institution. I spoke earlier about our commitment to transparency. Another core value is integrity. Integrity means standing up for what is right, even when it is not easy or comfortable to do so. For judges, it means faithfully applying the law to the facts of each case, without regard to the popularity or status of the parties, or fear of reprisal.

Hawaii's merit-based system of selecting and retaining judges protects their ability to make those tough calls, while still holding them accountable for their performance. And it has also helped to ensure that our judges reflect the remarkable diversity of our community: a study released last year by the American Constitution Society found that Hawai'i had *the* most diverse judiciary in the nation.

The fight for human freedom and dignity is not easy. Throughout Hawaii's history as a state, our courts have been open to all. Our merit-based system of judicial selection and retention gives judges the independence to make the call when the legal interests of a minority are challenged by the will of the majority. Our judges are grateful for that trust and ever mindful of the great responsibility that accompanies it.

Conclusion

In conclusion, I would like to thank our dedicated judges and staff who work hard every day to

treat all people with respect and fairness, even in the face of high caseloads and often contentious circumstances. It is a tough job, but they do it with dedication, excellence, and aloha. We could not succeed in our mission without the passion and commitment of every one of them.

While we are all blessed to live in this great state, the path forward has not always been straight or smooth. But despite the setbacks and sometimes grave injustices that people have encountered, the shared values that unify us have always been stronger than the forces of division.

We must never lose sight of the unique power of Hawaii's message of diversity and inclusion. Dr. Martin Luther King, Jr. spoke about it when he visited Hawai'i just after we became a state, in the fall of 1959. Dr. King addressed the Hawai'i House of Representatives, next door at Iolani Palace. The struggle for civil rights was gaining strength in the South, but still faced terrible obstacles. Rev. King referred to Hawai'i as an inspiration, stating: "you can never know what it means to those of us caught for the moment in the tragic and often dark midnight of man's inhumanity to man, to come to a place where we see the glowing daybreak of freedom and dignity and racial justice."

That glowing daybreak still burns bright in Hawai'i. It is a unique gift to the world, forged through the toil, sweat and sometimes blood of those who came before us in this beautiful place. At the Judiciary, we are sworn to protect that legacy, by upholding the rule of law and the freedoms set forth in our Constitution. Once again, thank you to the Legislature for its support of the Judiciary's work, and for giving me this opportunity to speak with you today. Mahalo, and aloha.