

**Remarks of Chief Justice Mark E. Recktenwald
American Judicature Society - Annual Meeting
December 5, 2019**

Good afternoon, aloha, and Happy Holidays!

I want to start by thanking AJS for its extraordinary contributions to our community, and in particular, to acknowledge Larry Okinaga for his outstanding leadership. I also want to thank Dean Erwin Chemerinsky for joining us today. Dean Chemerinsky is one of our nation's foremost constitutional scholars, and it is an honor to have him here.

AJS's mission is to secure and promote an independent and qualified judiciary, and a fair system of justice. That mission has never been more important than it is now, and I thank AJS for being steadfast in its support of judicial independence and courts that are fair, effective, and accountable in their work.

AJS's unique role was particularly apparent this fall, when it organized an event that brought together judges, legislators, and representatives of the executive branch and the community for a forum on the separation of powers. The discussions were candid and insightful, and the response of the participants was overwhelmingly positive. I want to thank all of AJS committee members who worked so hard to plan that event, and particularly Sylvia Yuen, as well as the panel members who spoke. We had more than 60 judges from across the state attend that

event -- or almost 90 percent of our full time judges - which reflects how seriously we took that opportunity. And, we are committed to moving forward with the positive dialog that was started that day.

AJS is more than a century old, and even after the national organization closed its doors, you carried on its mission here in Hawai'i. As a result, you have kept alive the enormous good will and strong national reputation that the organization spent almost 100 years developing. Because of your hard work and commitment, AJS will take an important step towards rebuilding nationally by convening a national convention here in Honolulu in November, 2020. I strongly support this critically-important effort and proposed a resolution supporting it that was adopted by the Conference of Chief Justices last year. The Conference will be meeting in Hawai'i in February, which will be a great opportunity to share more about the AJS Convention, and I am grateful for AJS's support of the work of the Conference.

So with attacks on judicial independence occurring across the country, and increased public distrust of our democratic institutions, we need AJS as a force on the national stage, and in states across the nation. One person who recognized that need was my colleague and friend from Iowa, Chief Justice Mark Cady, who passed away suddenly last month. In 2009, Justice Cady wrote the unanimous decision for the Iowa Supreme

Court recognizing that same sex couples had a right to marry under the Iowa constitution. The next year, three members of the court lost their seats in a judicial retention election after a well funded campaign was run against them. Chief Justice Cady worked hard in the ensuing years to explain to Iowans why judicial independence mattered, taking the Supreme Court out to engage communities around the state.

Chief Justice Cady was a strong supporter of AJS. I recall that he was the first Chief Justice to speak up in support of the resolution that I mentioned earlier, saying that AJS performed, in his words, "a vital function." I couldn't agree more, and a successful relaunch of a national AJS would be a fitting way to honor his legacy.

As Chief Justice Cady recognized, community buy-in is crucial to the efficacy of the judiciary and to building respect for the courts as an institution, particularly among our young people. Here in Hawai'i, we have done that through our Courts in the Community program. Courts in the Community brings Supreme Court oral arguments, in actual cases, into high schools across the state. Thanks to volunteer attorneys who visit classrooms, students have the opportunity to learn about the case before we arrive on campus, so it is an incredibly meaningful educational opportunity. And after the argument concludes, the students can ask the justices questions, about subjects such as how we became

judges and our work on the court.

On November 14, we held our fifteenth Courts in the Community program at Waipahu High School with almost 500 students from Leeward Oahu attending. Courts in the Community helps make the protections of the legal system real to young people, and it is a privilege to be a part of that effort. We are deeply grateful to the Hawai'i State Bar Association, the county bar associations, the individual attorney volunteers, the University of Hawai'i Richardson School of Law, and the teachers who invite us into their classrooms--together, these incredible partnerships make this program possible, and have brought it to more than 5,000 students statewide.

I'd like to share some initiatives that highlight the positive impact that an independent, merit-based judiciary has had on our community. We have had a very strong year, with several long-term projects coming to fruition. First, we opened the new Keahuolū Courthouse in Kona. The West Hawai'i community had waited more than 20 years for that project, and with the support of the Legislature, we were able to complete it on time and on budget. I was particularly excited to dedicate a new self-help center in honor of former Chief Judge Ronald Ibarra, where volunteer attorneys provide legal information to people who are representing themselves in civil cases. That center has two private meetings rooms where the attorneys can consult with the

users, which contrasts sharply with the old facility used for that purpose: a desk in the law library in the basement of our prior courthouse, which, by the way, previously served as the morgue for the old Kona hospital. So the new courthouse is making a real difference for people in Kona.

Another major, long-term project that took a huge stride forward this fall is our Judiciary Electronic Filing System (JEFS), which we expanded to civil cases in district and circuit courts. That means that parties can now file their documents with the court on-line, seven days a week. I want to thank Judge Gary Chang for leading that initiative, and the many others who worked tirelessly to make it happen.

In addition to those long term projects, I want to highlight several initiatives where our judges have been leaders, problem-solvers and innovators, and by doing so, they are making our community safer, providing justice more effectively, and ensuring that the promise of justice for all is a reality.

Let me start with public safety. I spoke with you last year about two task forces that were chaired by our judges, one relating to reform of our pretrial justice system (i.e., whether and on what conditions defendants will be released before trial) that was led by Judges Rom Trader and Shirley Kawamura, and another focused on prison reform that was chaired by my colleague Justice Michael Wilson. As a result, substantial legislative

reforms were enacted this past session that will facilitate the release of defendants who otherwise might be held in custody simply because they cannot afford bail. Our judges will now be able to make release decisions faster, with better information, and have more options. We will also have a new criminal justice institute in the judiciary that will identify evidence-based strategies for keeping our community safer. And, a new prison oversight commission will bring greater transparency to our jails and prisons.

Another example of innovation is our Community Outreach Court on Oahu, which aims to help individuals who are experiencing homelessness and who have pending charges for offenses such as sleeping in public parks or driving without a license. These citations can pile up quickly, and become overwhelming, as unpaid fines or outstanding warrants make it even harder for them to get back on their feet. Community Outreach Court offers them the opportunity to resolve their cases through community service, and also teams them up with counselors and service providers who help address their various needs - from employment, to substance abuse treatment, to housing. I am excited to report that this program expanded to Windward Oahu this summer, with Judge Darolyn Lendio presiding.

Going forward, we have identified the impact of the criminal justice system on those defendants with mental illness as

a major priority. Our current system where defendants charged with non-violent petty misdemeanor offenses can wait for months to be evaluated and then restored to competence is inefficient and often ineffective. Along with Governor Ige, we convened a summit at the Supreme Court in November, and heard experts from across the country about how to divert such individuals from the criminal justice system so they can receive treatment that will stabilize their conditions and give them a support system to move forward. There will be legislation to begin implementation that vision in the coming legislative session, and I am grateful to Judges Mark Browning, Shirley Kawamura and Ken Shimozono for their leadership.

In our civil courts, our Task Force on Civil Justice Improvements, under the leadership of retired ICA Chief Judge Craig Nakamura, released a comprehensive set of proposed rule amendments designed to make litigation in our circuit courts proceed faster, more efficiently, and with less expense to the litigants. The public comment period on those amendments just ended, and the Supreme Court will now review the proposals.

In our district courts, we expect to implement an on-line dispute resolution system for small claims cases next year. Litigants will be able to have their disputes mediated on-line, and if they are unable to reach a resolution, will have the option of having a judge rule based on record. On-line dispute resolution is not for everyone (such as people without computer

access or who do not speak English as their first language), but for many people, it will be a convenient, quick alternative to coming to a brick-and-mortar courthouse.

Finally, we have placed a major emphasis on increasing access to our civil justice system. For a justice system to be fair, it must truly be accessible to all individuals, regardless of their financial circumstances. Our Access to Justice Commission, under the leadership of Justice Simeon Acoba, has done amazing work to increase the accessibility of the court system.

For instance, the commission spearheaded an effort to open self-help centers in our courthouses, which I mentioned earlier in connection with our new Kona courthouse. We opened the first center on Kaua'i in 2011, and now have centers operating across the state. For a non-lawyer, the legal system can be confusing and difficult to navigate - and even a brief conversation with an attorney can make a world of difference. Statewide, the centers have helped more than 27,000 people, at almost no cost to the public, and we are deeply grateful to the volunteer lawyers, the HSBA and LASH for their support.

Another exciting pro bono initiative is POWER UP, which is training attorneys to assist clients in domestic violence restraining order cases. I want to thank U.S. District Court Judge Jill Otake, my colleague Justice Sabrina McKenna, Judge Dyan Medeiros, Claire Wong Black, and Nancy Kreidman, among others, for

their leadership.

Access to justice efforts are also helping to break down silos in government, as was seen with the Hawai'i Legal Aid Interagency Round Table project, spearheaded by Representative Della Au Belatti. This project helped to highlight ways that agencies can work together to address the civil legal services needs of people in Hawai'i.

We are also increasing access to justice by using technology. The Access to Justice Commission has worked with our civil legal services providers to create on-line resources, such as self-filling forms and an online pro bono system, and to develop partnerships with our state public libraries to make the on-line resources more accessible to the community. Another technology initiative is the development of an online Legal Navigator portal that will provide information and resources to people who face problems (such as eviction, unpaid debts, loss of public benefits) that may have a legal component. The Microsoft Corporation, in partnership with Legal Services Corporation, has dedicated nearly \$2 million worth of resources to develop such a portal in Hawai'i and Alaska. This portal will use artificial intelligence to help people identify legal problems, and then access resources to address both their legal issues and related needs such as social services or housing. Thanks to the leadership of LASH and its executive director Nalani Fujimori

Kaina, we expect the portal to launch next year.

I believe that Access to Justice is at the heart of the mission of AJS. What could be more fundamental to the institutional integrity of the judiciary than the guarantee that everyone who comes through the courthouse doors will be treated with respect and will have their story heard. Through our Access to Justice efforts, Hawai'i is making strides towards fulfilling that promise for all of our people.

Legislative

I'd like to briefly share some of our legislative priorities for the upcoming session. We are deeply grateful to the legislature for its past support, including by providing funding for two new family court judges on O'ahu and Kaua'i. Our additional operating requests for the upcoming year are modest, and would represent less than 1% of our current budget. We are seeking funding for a new district court position for Maui, where the population has doubled since 1982 without a corresponding increase in the number of district court judges. We are also seeking \$500,000 to support the provision of civil legal services. For the construction budget, we are seeking funds to keep our buildings servicable and safe, including \$17 million for the circuit court on O'ahu to replace the out-of-code fire alarm system as well as elevators that have been break down with increasing frequency including, sometimes, all of the public

elevators at once.

I'd like to close by talking about the way in which judges are selected and retained. A judiciary should reflect the people whom it serves; this principle is an important component of building public trust. Judicial selection plays a critical role in the composition of the bench, and in turn, the vitality of the courts. For instance, national studies show that selecting judges through an appointment process, rather than through elections, is far more effective in ensuring that the highest court of a state will reflect the ethnic and racial diversity of the general populace.¹

Hawai'i's robust merit-based process for selecting and retaining judges has attracted individuals who are highly qualified and who reflect the diversity of our community. In a 2016 study, the American Constitution Society ranked Hawai'i first among all fifty states and D.C. for the judiciary that best represents the community it serves in terms of gender parity, and racial and ethnic diversity.² In our district and family courts, almost half of our full-time judges are women, and overall, 40% of full-time judges are women. Clearly, there is more work to be done, but we can be proud of the strides we've made as a state to help ensure our bench reflects the diverse composition of our

¹ Source: Brennan Center, State Supreme Court Diversity *13 (July 23, 2019)

² Source: <https://gavelgap.org/>

community.

Once again, I'd like to express my heartfelt gratitude to AJS for all it does to support the administration of justice in Hawai'i, and for the effort that is underway to give other states the benefit of the independent, highly respected perspective that AJS provides. On behalf of the Judiciary, we look forward to working with you in the years ahead.

Mahalo, aloha, and peace and happiness for the holidays.