

**Remarks at the American Judicature Society Annual Meeting
December 3, 2020 - Remarks of Chief Justice Recktenwald**

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, and the rest of the AJS board for all that they do throughout the year. And mahalo to everyone who is participating here today.

AJS's mission is to promote an independent and qualified judiciary, and a fair system of justice. That mission has never been more important than it is now, when our community is under extreme stress because of the pandemic. I thank AJS for being steadfast in its support of judicial independence, and courts that are fair, effective, and accountable in their work. We are always deeply appreciative of AJS's work, but are especially thankful during these challenging times. We appreciate the new efforts just mentioned by Larry Okinaga - and look forward to the national convention in November.

I want to share with you a few key points about the judiciary's response to the pandemic and our plans for the future, and to talk about the upcoming legislative session, and the effect of the state's uncertain economic future on our operations. These are indeed dark economic times, with the state reporting a multi-**billion-dollar** budget shortfall. The

pandemic has hit our community hard in so many ways, with often heartbreaking results: loved ones lost or hospitalized, many still struggling to recover, school and family life disrupted, jobs lost, and businesses closed.

The judiciary has felt the full force of those impacts. I'll never forget entering the orders that essentially shut down most of our operations in March. Nor will I forget every call and message telling me that a judiciary employee had tested positive. Each one was like a punch in the gut.

And, we are seeing the impacts in our courtrooms. There has been a dramatic spike in domestic violence in the community: the Domestic Violence Action Center reports a 652% increase in client contacts for the six-month period from April-September of this year, when compared to 2019. Our domestic violence criminal division in Honolulu has approximately 800 pending jury trials; if each of the two judges in that division completes a jury trial per week, it would take about 8 years to try all of these cases. Even if many defendants ultimately plead guilty, that is still a huge backlog. And of course, new cases are coming in each week.

Imagine being a victim of domestic violence, hoping for justice and accountability, and having to wait years to get it. That is just plain intolerable. Delay in these cases puts lives at risk, and budget cuts that force us to reduce or

eliminate the services that we provide to prevent future abuse only exacerbates the harm.

In the face of these challenges, our judges and staff have responded with innovation and teamwork, held each other up through the darkest times, and, working with our partners, forged a path forward so we can continue to serve the community.

Our touchstone has been the health and safety of everyone who uses our facilities. We've learned from science and our own experience, and listened to experts at the Department of Health and other court systems across the nation.

We recognized in March that we needed a coordinated, statewide response to the pandemic, so we created the Committee on Operational Solutions, which is co-chaired by Judge Paul Wong and myself, and includes judges and staff from across the state. HSBA President Greg Frey and Executive Director Pat Mau-Shimizu have attended every meeting, and I deeply appreciate their support and insights.

We quickly realized that we had to move as many of our in-court proceedings as possible onto remote platforms such as Zoom and WebEx, to minimize the number of people coming into our courthouses. Judge Wong and his technology subcommittee have been the architects of our remarkable adoption of remote proceedings: we have gone from essentially no use of Zoom or

WebEx in March, to conducting over **31,000** cases on those platforms statewide in October alone.

Clearly, remote proceedings will be a significant part of our operations going forward, even after the pandemic. We had recognized their potential before the pandemic hit -- indeed, last year, we began work on the online dispute resolution project in small claims court, so parties could engage in mediation or even have their cases adjudicated without coming to the courthouse. The pandemic has demonstrated that we were moving in the right direction -- for example, we have seen appearance rates go up in our online traffic infraction hearings. The public and the bar welcome the convenience of being able to appear remotely, rather than coming into a brick and mortar courthouse. This is one of the silver linings of the pandemic -- we are, in effect, creating the courts of the future: courts that are more efficient and responsive to the needs of a community accustomed to doing business online. And in that regard, thank goodness that we had rolled out our JIMS electronic filing system in our civil courts last fall, so that pleadings can be filed online -- many thanks to Judge Gary Chang for leading that effort, and to everyone who assisted.

That said, there are some of our functions that cannot be done remotely--most notably, criminal jury trials. Jury trials pose a particular challenge, since by definition they

involve bringing groups of people together (12 jurors, two alternates, parties, witnesses, attorneys, the judge and staff). Jury selection is especially challenging, since we must bring about 35 potential jurors together. Accordingly, jury trials have been on hold since I entered that shut-down order in March. I am grateful to Judge Jim Ashford, Judge Wong and many others across the state, for their meticulous work planning for the restart of jury trials: literally measuring courtrooms with tape measures so we can maintain social distancing, acquiring masks and building clear barriers, doing walkthroughs with representatives of the Department of Health, and bringing together stakeholders for mock-trial proceedings. Thanks to all of this hard work, we just gave the green light to restart jury trials on the neighbor islands, and I am pleased to share that the first one was completed earlier this week on Maui. We debriefed the jurors, and will use their input to refine our procedures.

Courts on Oahu can resume jury trials in the week of December 14. There is a huge backlog of criminal jury trials in the first circuit - about 2,200 -- which is cause for concern in light of speedy trial requirements. Many of these defendants are incarcerated while still presumed innocent, which is both expensive for the state, and puts them at higher risk of contracting COVID while trial is delayed. However, as with

everything we do, our restart of jury trials is subject to the real-time health data and the situation on the ground in each community, and we won't hesitate to pause further, if needed, to protect health and safety.

The third focus of the Committee on Operational Solutions has been self-represented litigants, who may not have access to Wi-Fi or other tools needed to participate remotely. Thanks to Judge Sherri Iha and her subcommittee, we have made huge strides by, for example, publishing a guide to online access and a map of free Wi-Fi hotspots, and working with our Supreme Court Law Library to plan for a remote hearing kiosk where those without the required technology can come to attend their court proceeding.

In addition to the work of the COS, we have been adapting our existing programs to the constraints of the pandemic in innovative new ways. One great example was showcased in the Sunday Star Advertiser a few weeks ago: Judge Darolyn Lendio, working with the prosecutor's office, the public defender, and Catholic Charities Hawai'i, recently restarted our Community Outreach Court, expanding it to a new location at Villages of Ma'ili. Community Outreach Court provides folks charged with nonviolent, low-level crimes, who are often experiencing homelessness, the opportunity to perform community service in lieu of paying fines and fees, which can often pile

up and make it nearly impossible for participants to get back on their feet. The program also connects them with service providers who can help address their various needs -- from employment, to substance abuse treatment, to housing. Prior to the pandemic, Community Outreach Court had done amazing things. Between January 2017 and March 2020, 215 people graduated, almost 3,000 cases were cleared, and more than 4,600 hours of community service was performed. In addition, it helped 64 people find permanent housing. We are glad to get it restarted.

Another bright point has been the work of our legal services providers and members of the bar who have kept our ATJ efforts going. After briefly shutting during the early days of the pandemic, our self-help centers reopened remotely, and have served more than 1,000 people since May. I am grateful for our attorney volunteers for working to make sure those who need it most continue to be served in these difficult times.

Other challenges arose as the pandemic unfolded, including the threat of COVID spreading in our overcrowded jails. I am grateful to all of the trial judges who promptly reviewed hundreds of cases involving non-violent defendants individually to determine whether each defendant could be safely released to reduce crowding. Also, in our criminal courts, Honolulu police issued more than 60,000 criminal citations charging full misdemeanors for violators of emergency orders.

To put that in context, we had only 20,000 criminal citations in first circuit district court in all of 2019, and so the three employees who typically input the citations were understandably overwhelmed. The response from across the circuit, and from the second circuit as well, was overwhelming: 114 people pitched in to enter the citations into our system. I am very grateful to Deputy Chief Judge Melanie May and her team, and everyone who stepped up to meet that challenge.

In our civil courtrooms, we are facing a coming surge of thousands -- perhaps tens of thousands -- of residential eviction cases when the moratorium on evictions expires. Judge Lendio and our deputy chief judges have been working with the mediation centers, Legal Aid Society of Hawai'i and others to have mediation options in place to keep those cases out of the courts and, if possible, to keep people in their homes.

We are grateful to our community and government partners for their assistance throughout the pandemic. The HSBA has been an invaluable resource, facilitating meetings between myself, the chief judges and bar members, including most recently, on-line bench-bar forums with hundreds of attorneys participating. I am also grateful to the Governor, who has approved over \$1 million in CARES Act funds for us for pandemic response, and to Mayor Caldwell, who committed up to \$1.7

million to assist us with responding to the surge in pandemic citations.

That said, we have had to face these challenges with significantly reduced resources. At the end of the last fiscal year, which ended June 30th, our budget was reduced by 5%. In the current FY, our budget was reduced by 8.6%, which was more severe than the reductions imposed on most executive branch departments. These reductions have caused us to make very difficult decisions to curtail court operations in some locations (temporarily closing the courtroom in South Kohala effective Dec. 1), and to keep positions vacant. This has included delaying the filling of several judicial positions: we will have four vacant positions in first circuit court by end of the year, all in criminal, which will have a significant impact on circuit civil cases, with the transfer of one civil judge over to criminal. We've also had to slash funding by more than \$3 million statewide for programs that help some of the most vulnerable members of the community, such as services for victims of domestic violence, Guardians Ad Litem who represent children in custody matters and ensure the child's best interest is served, substance abuse testing, and mental health services for criminal defendants. These are services that help keep us all safe. We ultimately had no choice but to make these difficult cuts in light of the unprecedented budget shortfall.

I can't stress enough the life and death nature of the work that our judges and staff perform each day, and the impact of funding cuts on their ability to do that work effectively. Here on Oahu, we have four family court judges who preside over the CPS calendar, where the state seeks to protect kids (some literally newborns) who are subject to abuse or neglect. It is difficult to convey the complexity of these cases: the facts are often heartbreaking, and everyone involved often emotional. Each one of those judges is responsible for 130 kids who are in foster care because the allegations were severe enough that the child had to be removed from their family home. Every child's situation is different, involving social workers and treatment providers working with the parents, who are often dealing with struggles like substance abuse. When we cut services such as reducing funding for the GALs who provide the court with the child's perspective, and who look out for the children's interests in countless other ways, the judge has less information to make the life-changing determination of what's in the child's best interest -- which sometimes means the grave decision to terminate their parents' rights forever.

Some observers may suggest that the judiciary's role should be limited to simply deciding cases. In response, I would suggest watching a graduation ceremony in one of our treatment courts. These programs provide innovative approaches

that tackle legal problems at their root -- in the long run saving considerable money. Drug court, for instance, brings together a team of judges, treatment professionals, prosecutors and public defenders to help defendants overcome years of substance abuse. You will hear about families that have come back together, and once-repeat offenders who are now gainfully employed and reconciled with their loved ones. Eliminating these programs, which is a real possibility if the judiciary's budget is further cut, will make our community less safe, because the data shows that treatment courts significantly reduce recidivism. And, it will cost more in the long run: one study showed that for every dollar spent on drug courts like ours, \$3.36 was saved elsewhere in the criminal justice system.

We have also taken time to reflect on how the Judiciary can fully live up to the promise of equal justice for all. Hawai'i is far from immune from the inequity that spurred this summer's protests and calls to action. For instance, in Hawai'i, data from a 2016 report shows a person who is black is more than twice as likely to be imprisoned as a person who is white, and in 2018, about 40% of Hawai'i's incarcerated population were Native Hawaiian, compared to just 18% of the general population of the state. So it's clear that there is a lot of work to do, and that this will be a long and sometimes difficult conversation. But, it's a process that has already

started on many different fronts. We have taken some important steps through reforming bail and other aspects of our criminal justice system, through training our judges and judiciary staff on how to recognize and address implicit bias, and through increasing access to our civil justice system. One of the key outgrowths of our recent pretrial reform efforts was the formation of the Criminal Justice Research Institute, which will provide critical data on the criminal justice system and help us identify inequality within it.

Also, our Committee on Equality and Access to the Courts has begun discussions with community partners about issues of racial justice, and I thank the Committee on Equality and Access to the Courts Co-Chairs Willie Bagasol and Judge Rebecca Copeland, and retired Judge Sandra Simms and Justice Sabrina McKenna for their leadership, along with the staff at the Judiciary History Center. In sum, we are listening to those who have bravely raised their voices across our nation to fight for a more equitable future, and we are committed to heeding the call to action.

Looking ahead, the economic projections for the state continue to be grim. As a result, the governor is negotiating for furloughs of state employees and on top of that, he is directing his departments to plan for additional reductions of 10-20% in the coming fiscal year.

In the face of these circumstances, we are planning on submitting a budget that calls for our operating funds to remain steady through the biennium that begins July 1, 2021: no new funding, but no further cuts. We face a long and difficult budget process at the legislature, which will have to make very, very difficult choices. But as the examples I have shared with you illustrate, we deliver services essential to the health, safety and functioning of our community, and the well-being of children and families, and the demand for these services will increase even more as criminal trials come back on line, pandemic citation cases make their way through the system, and eviction cases resume, and as other impacts of the pandemic, such as increases in domestic violence, sex trafficking, and substance abuse, become even more evident. We are on the front lines of the response to the pandemic, delivering core services that keep people safe, and society functioning so that we can recover economically.

Our approach on the CIP side is a bit different since the funding source for such projects is separate and we believe the legislature will be more open to funding construction projects that will stimulate the economy. There, we are proposing modest additional expenditures (\$22 million/\$18.6 million) on shovel-ready projects for repair and maintenance, to keep our buildings safe and usable. We have proposed some of

those projects like our top priority of renovating the elevators and fire alarm systems at Kaahumanu Hale in prior sessions, and the urgency is only increasing.

In addition to the budget, we expect to propose several bills at the legislature, including one that would enable me to temporarily assign circuit court or retired appellate judges to sit on the ICA during a vacancy, while we await the appointment of a replacement. Also, it is possible there could be renewed interest by the legislature in the judicial selection process. As you know, there have been some significant challenges to our merit-based process, beginning in 2016. AJS has been an invaluable resource during those debates, and we are grateful for its independent voice.

But for now, our focus is ensuring that the judiciary receives the operating funds we need to keep our community safe and resolve disputes in a timely manner so our economic recovery can continue. With the 8.6% cut that the judiciary took this fiscal year, we currently account for less than 2% of the overall state budget. And our share of the overall state budget has decreased significantly over the years—we went from 2.56% in FY 2011, to 1.91% this year. In short, we were already a lean operation before the pandemic hit, and are even more so now. Further significant cuts will fundamentally compromise our

ability to serve the community, and protect its most vulnerable members.

AJS has been a critical supporter of judicial independence and effective judicial administration, and we are deeply grateful for your perspective. As an organization, you are uniquely able to explain how essential an adequately funded court system is for a healthy government, and your voice is particularly important during these unprecedented times.

In closing, a lot has changed since the last time we gathered -- one year ago. But the Judiciary has risen to the challenge and has continued to provide essential services that keep us all safe, even as we've had to tighten our belts, through innovation and determination. As we look ahead, I am acutely aware that there are more challenges to come. But I am confident we can meet those challenges, and forge a judiciary that will be even more efficient and responsive to the needs of our community, long after the pandemic has ended.

Mahalo, and I wish you a joyful, healthy holiday season.