

**Keynote Address of Chief Justice Recktenwald
American Judicature Society National Conference –
Annual Meeting and Awards Luncheon
November 22, 2021**

Aloha mai kākou and good afternoon! It has been an amazing morning—I told you earlier that this program was worth waiting for, and it has lived up to its promise. From Professor Geyh, Dean Chemerinsky and Alicia Bannon to Justice Sotomayor and others later in the week, this conference has attracted our nation's most respected thinkers on the role of an independent judiciary in our society.

Now why is that? On one level it's simple: it's very hard to say no to Larry Okinaga. But it also reflects the sense, among those who care about our system of justice, that many profound forces are coming together at once. That confluence of forces poses challenges to our ability to earn the respect of those we serve, but also present the opportunity to renew and to truly deliver on our promise of justice for all.

So, what are those forces? Obviously, there is the pandemic, with its horrific impacts on so many lives here in Hawai'i and around the world. But out of that crucible has come innovation and resilience, as our Hawai'i Judiciary and others across the nation have adapted to a COVID-19 world by using technology to make ourselves more accessible and transparent. It has literally been transformative—here in Hawai'i, we have

held more than 350,000 remote hearings since August of last year. Thanks to Judge Paul Wong, who spearheaded our efforts to implement remote proceedings. This move is not without its concerns, including that many people lack the necessary technology to participate, and there are legitimate questions to consider about fairness of the proceedings, and impacts on outcomes. But the point is that we have the tools to make ourselves more accessible to a digitally-savvy population: a population that, quite frankly, is losing interest in our 1930s era model of coming to a brick-and-mortar courthouse and waiting for several hours for a five-minute proceeding to be called.

What are the other forces at work? First, the legitimacy of our democracy is being challenged in ways we wouldn't have thought possible just a few years ago, most visibly in the Capitol on January 6th, but also in countless interactions on social media. This makes our efforts at civic education, and improving trust and transparency, all the more urgent.

Second, while we have to better explain what the rule of law means, we also have to do a better job of delivering on its promise. Our civil justice system has become too slow, inefficient and costly, and as a result, ordinary people cannot afford a lawyer, and many simply opt out altogether. Our efforts at increasing access to justice are critical to establishing our legitimacy as an institution.

Third, we have to listen to the voices that have been raised regarding the systemic inequities that exist, and we must act to eliminate those inequities. That reckoning started on the mainland in the wake of the deaths of George Floyd and too many others, but these are conversations we must have here in Hawai'i as well, and we have been doing just that. We've also made progress on areas such as reforming our pretrial justice system and working to root out implicit bias. But there is much more work that needs to be done, here and across the country.

Our nation's judiciaries face some very significant forks in the road ahead: we can slide toward irrelevance, or we can be the bedrock of a vibrant democracy that delivers on the promise of justice for all. In making those choices, judicial leadership is key, and it is critical that we have exceptionally competent judges, who have the independence to make decisions based on the law and the facts of each case, and who reflect the diversity of the communities we serve. Here in Hawai'i, our merit-based judicial selection system has been at the forefront of the effort to ensure we have a strong, independent and diverse judiciary, and AJS has been a strong advocate for keeping that system vibrant and improving it whenever possible.

As I noted this morning, I cannot overemphasize how important AJS has been to improving the administration of justice in Hawai'i, and I extend my gratitude to Larry Okinaga

and everyone who has joined in that effort. I also want to thank AJS for honoring two very special individuals this afternoon, and I extend my aloha to each of them. Colin Miwa has been a thoughtful, persuasive advocate on behalf of judicial independence who has answered the call whenever he's been needed, and that's been a fair amount in recent years. And CJ Ronald Moon, during his 17 years as chief justice, shaped the Judiciary into the organization we are today, was a respected voice on the national stage for fairness and equity, and has been a mentor and friend to me and countless others.

Students from St. Andrews Priory are here today - mahalo to them and their teacher, Misha Matsumoto. In recent years, the need to strengthen civic education and encourage community engagement has become even more urgent, and AJS has been at the forefront of addressing that need. Under the leadership of Chief Judge Lisa Ginoza and attorney Ted Petit, AJS developed a proposal to bring sustained focus and attention to our state's efforts to further understanding of our democracy. As a result, at the beginning of this year, the Hawai'i Supreme Court established the Commission to Promote and Advance Civic Education ("PACE Commission") to address this growing need with Chief Judge Lisa Ginoza serving as chair. Chief Judge Ginoza and I met recently with Department of Education interim

superintendent Keith Hayashi, and we identified a number of exciting areas where PACE and the Department could collaborate.

Moreover, at the Judiciary, we must create opportunities to increase transparency and understanding of the judicial process. One way that we have done that is through our Courts in the Community Program, which brings actual Supreme Court oral arguments to high schools across the state. Students from participating schools complete several civics-related lesson plans prior to observing the argument, and after the argument concludes, they can ask questions of the attorneys and then the justices.

We are grateful to the Hawai'i State Bar Association, the University of Hawai'i Richardson School of Law, the individual attorneys who volunteer their time, and the teachers who invite us into their classrooms: they make this program possible. Together we have been able to share this experience with nearly 5,500 students statewide, and I am looking forward to our next Courts in the Community event, which is scheduled to take place virtually on December 1st with Aiea High School, Moanalua High School, and Molokai High School participating. We've had to provide this program virtually since the pandemic started, which means we can bring students from different islands together to share this unique experience. However, we are looking forward to resuming the program in person when it is safe to do so.

More generally, the use of remote hearings has had the significant benefit of making it easier for the media and public to watch court proceedings without coming to the courthouse to do so. For example, the Hawai'i Supreme Court has held almost 40 remote oral arguments since the pandemic began, including one that involved a case from Maui that had almost 500 viewers. Undoubtedly, many of those viewers would not have travelled to Honolulu to see the argument live. That said, it is important that people have the ability to observe the courts operate in person. Both the Supreme Court, and the Intermediate Court of Appeals, expect to resume in-person oral arguments soon. One important development at the Supreme Court is that we will continue to live-stream all of our arguments, something that happened only occasionally before the pandemic. That is a good example of innovations developed during the pandemic making us more accessible in the long run.

As with many courts around the nation, the pandemic transformed the way the Hawai'i Judiciary operates. I am so proud of how our judges and staff responded. Even in the dark days back in March and April of 2020, we never stopped delivering justice to those who needed it most. And through innovation and teamwork, we quickly adapted: we implemented remote hearings to minimize the number of people in our courthouses, we created a safe environment for those proceedings

that needed to be conducted in person, such as criminal jury trials (we had to pause a second time this fall, but just restarted a week ago), and we found creative ways to continue providing access to justice, especially in a digital environment. I deeply appreciate our judges and staff, and all our community stakeholders who worked together to chart a path forward so we could continue to provide justice to our community. Special thanks to the Committee on Operational Solutions, led by Judges Paul Wong and Jim Ashford, and to the chief judges - Mark Browning, Bob Kim and Lisa Ginoza, who are here today, as well as Rick Bissen and Randal Valenciano.

Remote hearings were a key element of our pandemic response. Going forward, they can increase accessibility to the courts and make us more transparent, by making it easier for the media and public to observe and understand what we do and how we do it. Clearly, many have embraced the convenience of appearing remotely, and it has allowed court users - especially self-represented litigants - to avoid taking time off work, finding childcare, and arranging for transportation to the courthouse.

However, remote hearings aren't a good fit for all proceedings or case types, and we must ensure access for those with limited English proficiency or disabilities. The Judiciary is also mindful of those who don't have the requisite technology

to participate remotely, and we have worked hard to lessen the effects of this "digital divide."

Another important concern is ensuring that appearing remotely does not negatively affect outcomes in comparison to in-person appearances, particularly in criminal proceedings. For example, does someone who appears for a bail hearing on a screen from jail present less effectively than if they were in the courtroom, in front of the judge?

These are all important questions that are being asked nationally. Here in Hawai'i our Committee on Operational Solutions, chaired by Judge James Ashford, has been developing recommendations to our Supreme Court for rules regarding the integration of remote hearings into the courts' operations on a long-term basis.

In sum, though we must be mindful of the concerns, in general remote proceedings have the potential to be an important tool for increasing access to justice. More generally, ensuring that people have access to our civil justice system, even when they cannot afford an attorney to represent them, has been and will remain a key focus of the Judiciary. Our Access to Justice Commission has been at the forefront of those efforts. My heartfelt appreciation goes out to Chief Judge Joseph Cardoza (ret.), Chair of the Commission, for his determination to

provide access to justice for the most vulnerable members of our community.

Over the last decade, the Commission, with the support of Hawai'i Justice Foundation, has planned and carried out numerous initiatives to help achieve access to justice, including supporting one of our signature programs - the Access to Justice Rooms and Self-Help Centers across the state, where attorneys volunteer their time to provide information or brief advice to self-represented litigants. This year marks the ten-year anniversary of the opening of the first self-help center on Kaua'i. Since then, over 32,000 people have been helped to date - all free of charge and at almost no cost to the state. By transitioning to offer services remotely in May 2020, we have continued to assist more than 3,500 people statewide during the pandemic alone. This is only possible because of the support of the Hawai'i State Bar Association and the Legal Aid Society of Hawai'i, and all of the volunteer attorneys who have generously given their time and expertise to provide legal assistance to those who need it most.

We have many other ATJ initiatives that are making a real impact, from the Appellate Pro Bono program, to Hawai'i Online Pro bono (or HOP), to courthouse navigators, to the community navigator initiative, which trained community leaders who people typically turn to in times of crisis about our ATJ resources, so

they could direct those in need where to get help. These efforts are being noticed nationally—in a recent access to justice ranking, Hawai‘i was rated sixth among the states and territories. That is significant recognition, but we have much more work left to do.

Looking ahead, we envision that technology will continue to play a critical role in helping meet the legal needs of those who cannot afford an attorney, even after the pandemic. The most recent example of this is our Online Dispute Resolution (“ODR”) Pilot Project that launched this summer in the First Circuit District Court on O‘ahu and Second Circuit on Maui. The ODR Pilot Project is an online program designed to assist litigants in resolving their dispute without having to go to court in small claims cases. The platform offers interactive court forms and facilitates electronic filing, as well as allows for online negotiation and mediation.

One area that has been a significant concern in light of the economic impact of the pandemic has been evictions—and in particular, the concern that there would be a surge of cases when the Governor’s eviction moratorium ended. Beginning last year, the Judiciary worked with agencies and community partners across the state to prepare for the lifting of the moratorium, and I thank Judges Melanie May and Darolyn Lendio Heim, as well as our neighbor island deputy chief judges, for their leadership

in that effort. We are so grateful for these partnerships, and particularly for the mediation providers who have been working tirelessly to resolve these disputes.

I also want to thank the Legislature, especially Representatives Troy Hashimoto and Nadine Nakamura, for working collaboratively to enact legislation that helps keep families in their homes. Act 57 extends the required period for a notice of termination of a rental agreement and requires mediation before filing a claim. Implementation of Act 57 has been working. It has slowed the influx of eviction cases, allowed additional time for alternative dispute resolution, and is a prime example of what can be accomplished when we work together toward a shared goal.

In addition to improving access to our civil courts, we must acknowledge and address systemic inequities in our justice system at-large. Hawai'i is not insulated from the racial injustice that spurred last summer's protests, across the country and here at home. The Judiciary has taken some important first steps that include working with the Legislature to pass pretrial reform legislation, by providing implicit bias training for judges and staff, and, with the support of the Legislature, establishing a Criminal Justice Research Institute to improve data collection to identify inequities in the system. It is a good start, but there is much more that we must do.

Critically, we must listen and learn from those who are courageously fighting for a more equitable future. Earlier this year, our Committee on Equality and Access to the Courts sponsored a series of virtual panel discussions on racial equity to do just that. The response to these events was astounding, and underscored the importance of creating a forum for these often-difficult conversations. Many thanks to the Committee, and in particular, Willie Bagasol, Judges Rebecca Copeland and Sandra Simms, and Justice Sabrina McKenna, for their thoughtful leadership in convening these meetings, and in identifying next steps. These are profound challenges, but we are committed to ensuring that our justice system truly provides justice for all.

One important aspect of these conversations is focusing attention on diversity, equity, and inclusion within the Judiciary, including among our judges. When our next group of six judges is sworn in next month, 47% percent of our full-time judges statewide will be women. But there is still work to do to ensure that judges in all our courts reflect the diversity of the community they serve.

To provide greater transparency going forward, the Judiciary recently posted a detailed survey of our judges regarding gender, including a non-binary option, as well as race and ethnicity, and will continue to update it.

We must also continue to encourage diverse applicants to apply through steps including outreach to underrepresented communities, by providing opportunities for professional development to attorneys in those communities (such as serving as part-time, or per diem judges), and with a judicial selection process that encourages trust and confidence that applicants will be fairly evaluated when they do apply. Critically, Hawai'i has a merit-based selection process, which national studies have shown contribute to a more diverse judiciary. I am very grateful to the Judicial Selection Commission for all its hard work, and to AJS for its unwavering support of a merit-based selection and retention process.

When the Legislature reconvenes in January, I am optimistic that we will have a productive session. Like all parts of state government, we had significant spending reductions due to the pandemic. Indeed, our current employee count is about 9% lower than it was in 2019. Our funding was not reduced further during the current fiscal year, for which we are very grateful, and we hope to have some modest restorations in the coming session, such as funding for two of our judge positions on the big island which we have had to support in part by keeping other positions vacant. Mahalo to Third Circuit Chief Judge Robert Kim for his leadership. We are also seeking about \$12 million statewide in construction funding for projects to keep our current buildings

functional and safe - from fixing fire alarms to repairing leaky roofs and rusting air conditioners.

In closing, the Judiciary persevered through the challenges posed by the pandemic: we maintained vital court services, and we continued to administer justice with integrity. We had to adapt and innovate, and by doing so, we became more responsive to the evolving needs of the people we serve. In short, the lessons we learned have made us a stronger, more resilient institution. At the same time, we have recommitted ourselves to delivering on the promise of justice for all by making our justice system more accessible, fair, and transparent. And we are dedicated to supporting the rule of law and the institutions of our democracy through civic education, so that the public understands who we are, what we do, and how we do it with integrity and fairness.

None of this is easy, but we have a lot of support from the community, including, critically, from the American Judicature Society. I am confident that we will succeed, and that down the road, we will look back at this as a transformative time for the administration of justice in Hawai'i.

Mahalo nui, and I wish you a joyful, healthy, and happy Thanksgiving holiday!