

## **REMARKS**

by

**The Honorable F. Philip Carbullido**

**Chief Justice of Guam**

**State of the Judiciary Address**

**Thursday, April 29, 2004**

**Guam Legislative Session Hall**

**Hagatna, Guam**

Governor Camacho, Lt. Governor Moylan, Mr. Speaker, Senators of the Twenty-Seventh Guam Legislature, Village Mayors, Podium Guests, Father James, the Reverend Graham Rogers, Members of the Consular Corp., Commanding Officers of our Armed Forces, Guam Bar President Jay Arriola, Members of the Guam Bar, Friends of the Court and Family. On behalf of the Judiciary, I thank you for your presence and interest in the State of the Island's Judicial Branch.

Critical to the protection of the Rule of Law and to ensuring our system of justice remains a model are my colleagues on the bench. I am privileged to introduce them to you. In order of seniority, they are: Associate Justice Frances Tydingco-Gatewood, and our newest complement to the Supreme Court bench (and he truly is a "compliment" to our court), Associate Justice Robert J. Torres. From the Superior Court are Judge Katherine Maraman, Judge Steven Unpingco, Judge Michael J. Bordallo. and Judge Elizabeth Barrett-Anderson. Presiding Judge Alberto Lamorena and Judge Anita Sukola are currently attending an educational conference. I also recognize, my esteemed colleagues Retired Chief Justice Peter C. Siguenza, Jr., and Judge Richard Benson.

In a few days, on May 1<sup>st</sup>, our nation will celebrate Law Day. It is a day when the court and its officers teach, promote and celebrate the law and the legal system which protects our fundamental rights and freedoms. The theme for Law Day this year is “*To Win Equality by Law: Brown v. Board at 50.*” This year’s theme commemorates the 50<sup>th</sup> Anniversary of the landmark case of *Brown vs. Board of Education*, which, at its most basic level, signifies the historical evolution of the enforcement of equal rights, as guaranteed in the United States Constitution, which founds the very society in which we now live, and to which we are now accustomed. The directives of the United States Constitution and the Organic Act are what we, as justices and judges of the judiciary, have taken an oath to uphold. You may ask “why?” – the answer is plain – because these documents are the basic manifestations of the representative and democratic society in which we live, and as emphasized by the *Brown* decision, marked by a commitment to the rule of law. Which is why I send a special appreciation and thank you to Speaker Ben Pangelinan for inviting me to speak here – because what I wish to accomplish today, primarily, is to report to the public – all those who, with their tax dollars and with that oftentimes unspoken confidence, have faith in the mechanisms and nuances of a representative, democratic, and just system of government, *including, above all*, an impartial and responsive judicial system, that is committed to the rule of law – I wish to report to all these people exactly what the judiciary has done for *them*. As a regularly elected body, the Guam Legislature is the embodiment of all these individuals. Because my main goal today is to inform the public on the efforts and challenges facing the judiciary, it is particularly appropriate that I deliver this address – the State of the Judiciary – in these legislative halls, where representative government exists in its most apparent form. Again, I thank you Mr. Speaker for returning the delivery of this address back to the halls of the People. It is an honor. It is a privilege. And it is my duty.

**A. Judicial Independence and Accountability**

My last delivery regarding the state of the judiciary was in 2002. There, and in speeches I delivered subsequently, I’ve made it a point to give particular attention to the concept of judicial independence.

Reflecting again on this year's Law Day theme, perhaps the best example of judicial independence is the historic *Brown v. Board* decision. In the face of controversy and fractious public opinion, the U.S. Supreme Court in *Brown* was free to interpret the Constitution's guarantee of the equal protection of the laws to all school children, without fear of retaliation against the judicial branch or a diminution in its powers and responsibilities. *This* is judicial independence.

Judicial independence embodies the principle that the courts must operate free, in their decision-making and administrative capacities, of both public and private pressures.<sup>1</sup> Judicial independence is what underlies the effectiveness by which the judicial branch accomplishes its primary task within this government, which is to interpret and apply the laws which govern the conduct of individuals, and entities, within society.

Part and parcel of this judicial independence is our duty to provide "accountability" - both within the branch, and ultimately, to the public. Although the judiciary has consistently maintained, and continues to strive for the independence necessary to the ability to operate and to decide rights and disputes impartially, the judiciary is nevertheless part of the government, and must be held *accountable* for proficient management of court business.<sup>2</sup>

Considering the current state of the island and government financially, I don't believe there is a topic of more interest to the public, or more deserving of articulation today, than "accountability."

You may ask what is "accountability?" In short, "accountability" is the ability to "serve the public with maximum effectiveness."<sup>3</sup> There are many core areas of responsibility for which the judiciary should, and must, be held accountable. Accountability requires an intelligent, responsible use of taxpayer dollars. It requires the creation of efficient processes for litigants, and the use of available modern technological resources to facilitate the prompt delivery of responses by the courts.

Accountability requires the fostering of a professional and knowledgeable employee base, and the maintenance of judicial facilities. It requires the destruction of barriers to open courts, and the availability of avenues wherein the public and practitioners may offer constructive criticism and identify areas of which the courts can improve in its delivery of services. If we succeed in all these areas, the judiciary will then have served the public with maximum effectiveness. Accountability will be achieved.

The big question then is how has the judicial branch striven to develop, foster, and preserve “accountability” to those we serve - the Bar, the litigants, and the public. I take this opportunity to explain the changes within the judicial branch which have helped to improve accountability, the plans within the branch for further refinement of the effectiveness by which we serve those who come before the courts, and the challenges we struggle to overcome in meeting the needs of the community.

#### **B. Unified Judicial System and Reorganization**

The most visible change to the judicial branch is the recent creation, through Public Law 27-31, of an integrated and unified judicial system, and the reconstitution of the 5-member Judicial Council as the administrative and policymaking body governing the branch as a whole. This measure is the reunion of the judiciary. The 27<sup>th</sup> Guam Legislature must be commended for its efforts in passing the re-organization legislation, because, in doing so, they have laid the groundwork for the creation of a more efficient and responsive judicial branch. It is vastly important that the judicial branch receive critiques as one entity, and speak with one voice. It is only through this that the judiciary may develop as an organized institution committed to the mandates set forth by law. P.L. 27-31 has enabled this to happen. I would like to thank Senator Randy Cunliffe for his leadership and perseverance in the enactment of P.L. 27-31, and the Senators who supported this Bill.

Since the newly reconstituted Judicial Council first met in November 2003, we have made it our mission to provide necessary reform and reconstruction within the judicial branch. The Council has selected an administrator of the courts, Mr. Perry Taitano. Having one administrator over the entire judiciary has enabled us to get a full picture of what is going on within the branch. This has aided tremendously in identifying the responsibilities, or mandates, of the branch, the staffing patterns in relation to the accomplishment of our responsibilities, the financial condition of the branch, and the inefficiencies which place unnecessary burdens on how we carry out our mandates with limited resources.

Having the ability to step back and get a complete picture of where we are as an organization is important to accomplishing the first goal towards greater accountability - namely, the responsible and effective consolidation of the Superior Court and the Supreme Court. Consolidation of the two courts is the foundation for realizing a more responsible use of public resources and the efficient maintenance of services for those using the court system.

Taking aim at redundancy, duplication, and inefficiency, the first initiative put forth by the new Judicial Council was the creation of a Task Force on Judiciary Consolidation. Comprised of representatives from both the Supreme Court and Superior Court, the Task Force for the past five months has been immersed in researching re-organization measures for the operational structure of our judicial branch, focusing on areas including personnel, finance and travel, and procurement.

I am pleased to report today that the Task Force has already implemented immediate measures to capture savings, such as folding two maintenance service providers into one, blending computer consultant contracts, and eliminating unnecessary vehicle leases.

The Task Force is also actively engaging vendors to enter into renegotiation for nearly half a million dollars worth of contracts they may have with the Supreme and Superior Courts for similar

services and or products. Within the next few months we expect to yield additional savings through the renegotiation of legal research services, photocopier equipment contracts, internet service provider contracts, insurance policies, security alarm contracts and telecommunication service contracts.

The Task Force has also worked on reviewing the various internal rules and procedures relating to court procurement and travel which have not been updated in many years. The changes reflect the mood of fiscal responsibility which now permeates not only the branch, but the government as a whole. The new travel rules will require all court personnel, including Judges and Justices to travel on economy class. The revised procurement rules will incorporate a request for proposals procedure so we can obtain services and products quicker and cheaper. The new property rule will ensure that every item procured can be accounted for properly. These new rules and procedures will buttress our foundation of accountability for the money entrusted to us for court operations.

Furthermore, in the coming months, the Task Force will be going through the statutory requirements for re-organization. The Task Force has completed its review of the overall organizational structure of the court system, and has recommended restructuring the current 11 divisions of the court into 6 divisions. The new organizational chart, once approved and implemented, will reflect a judiciary that is leaner and streamlined. And, it will translate into a judiciary that can better manage its resources to fulfill its mandates.

Re-organization should not be regarded with skepticism. I can frankly note to you that we are making progress, and the results will equate to monetary savings. Moreover, while not immediately apparent, the consolidation of our resources, programs, and services will over time enable the court to improve efficiencies. In the long term, the court benefits, the litigants benefit, and the public benefits.

### **C. New Initiatives**

In addition to our efforts in reorganizing the branch, we have also made progress towards improving services to the practitioners and litigants, which, I'm pleased to say, have had the *added* advantage of potentially huge savings to the judicial branch. I'd like to highlight a few of those efforts today.

#### **1. E-Filing and Compiler of Laws**

It is with immense pleasure that today I announce the official launch of the Supreme Court of Guam's E-Filing project.

Considering the wide availability and use of computer resources and internet access, the court thought that litigants as well as the court would benefit tremendously if the rules allowed litigants to file documents electronically, through the internet. We felt that electronic filing would aid in cutting the costs of litigation, including paper and printing costs, and costs associated with the physical delivery of documents. Similarly, we felt the court would benefit over time by the reduction of paper documents which require physical storage space. Last year, we procured specialized software which will provide the ability to file documents through electronic means. In addition to allowing litigants to file documents on-line, we requested that our electronic filing system contain a library of all documents filed in every case in the Supreme Court. This would allow everyone - parties, the Bar, and the public - greater access to court documents through the internet. Last month we circulated proposed rules to govern electronic filing in the Supreme Court. The rules were finalized and we adopted them yesterday. I must recognize Justice Torres, who, to my great surprise, is a lot more technologically savvy than I expected. He has played a tremendous role to ensure that the E-Filing Project reached full completion. After months of testing and modifying the software, I am pleased to launch the Supreme Court's Electronic Filing System. Starting today, parties may register for use of the court's E-Filing System - and may file documents in the Supreme Court on-line.

E-Filing will surely make it faster, more convenient, and cheaper for litigants to file documents with the Supreme Court. We hope to have the Superior Court on-line some time in the future. E-filing is one major area where we've been able to improve in the process available to litigants and the courts.

Furthermore, as of April 26, 2004, with the functions of the Compiler of Laws being moved to the Supreme Court, we are now in a position to update and improve the publication of Guam laws. I thank Senator Bob Klitzkie, and the other Senators who supported the passage of Bill 49.

We look forward to assuming the important duties of the Compiler of Laws, and we are eager to improve upon the work already done to date in this area. We hope that the changes we intend to implement will facilitate the accessibility of Guam law, which will improve practice before the courts.

On that note, I would like to touch upon important areas where the judiciary has *already* made progress regarding practice in the courts.

## **2. Indigent Defense**

One of the most significant areas of revision and improvement is with regard to indigent defense. Led by Associate Justice Frances Tydingco-Gatewood and Judge Mike Bordallo, and their Subcommittee on Indigent Defense, the judiciary has undertaken serious correction and reform to the current system of providing legal representation to indigent criminal defendants, who are constitutionally and statutorily entitled to legal representation at the government's expense before the courts.

The Subcommittee on Indigent Defense discovered that as of November 19, 2003, the court owed approximately \$743,000 in outstanding vouchers due for work done by previously appointed

private attorneys spanning over 5 years. We found it absolutely imperative to move towards the full payment of outstanding amounts due.

We have, to date, paid 100% of the vouchers. As of April 20, 2004, the court has also paid an additional \$600,000 for vouchers submitted after November of last year. With that accomplished, we continue to expect the high quality of legal services provided to indigent defendants by the Bar.

The entitlement to a court-appointed attorney is a fundamental right held by indigent individuals who are brought before the court and who face the loss of liberty. Thus, it is a burden that must be shared by all and I take this opportunity to thank the Governor for the recent release of \$350,000 which represents half of the amount approved for indigent defense for the present Fiscal Year. I emphasize, however, that even the entire budgeted amount of \$700,000 will fall far short of the amount needed to pay for indigent defense under the current court-appointment scheme.

Indigent defense has been a serious problem for the Judiciary for the past several years. The high costs, approaching two million dollars per year, compounded with the consistent lack of adequate funding provided by the legislature and the ever decreasing resources of the judiciary have compelled us to seek other means to fund indigent defense.

Justice Tydingco-Gatewood's Subcommittee has been aggressively seeking more cost effective mechanisms for appointing private attorneys. The Subcommittee proposed the creation of a Private Attorney Panel, consisting of attorneys with extensive criminal defense experience. The experienced attorneys in this panel are able to more efficiently process cases and thereby save the court money in the long run.

Moreover, I am happy to report that the Subcommittee's proposal to create an Alternate Public Defender Office was approved by the Board of Trustees of the Public Defender Service

Corporation. I thank the Executive Director of the Public Defender, Attorney Kathy Maher, for taking the lead and aggressively pursuing the establishment of the Alternate Public Defender. The Alternate Public Defender will handle approximately 800 cases per year at a projected cost of \$600,000 dollars. Compare that amount to the \$1.25 million per year that the Superior Court was spending to provide the same legal representation, and the benefits are immediately realized. We expect the Alternate Public Defender to be operational by October 1, 2004, and we eagerly anticipate its results.

There's certainly more that can be done in this area towards improving the quality of legal services while achieving savings. For this reason, the Supreme Court is taking steps to adopt a *pro bono* requirement, wherein attorneys licensed to practice law in Guam would be required to provide 20 hours of annual *pro bono* services to indigent defendants. There are currently 241 active members of the Guam Bar. This translates to approximately 4820 hours of *pro bono* work for our indigent community. It is ideas like this which the court is constantly considering in light of the Government's responsibility to provide legal representation to the many indigent defendants who come before us.

### **3. Other Committee Work**

In addition to our efforts with regard to court-appointments, the judiciary has undertaken a comprehensive reform of almost all aspects of practice before the courts. We've convened 16 different committees to undertake a thorough review of various aspects of court practice, ranging from the rules of procedure (both at the trial and appellate levels), systems for alternative dispute resolution (outside litigation), as well as rules governing attorney *and* judicial discipline. Before I elaborate on the committee work, I have to emphasize at the outset that *the* most significant aspect of these efforts towards reforming court practice, is that it has been through a collaborative effort between the Superior Court and Supreme Court, *and* between the Bar and the Bench. Each of the 16 Subcommittees has around 6 to 8 members, consisting of a Supreme Court justice, a judge from

the Superior Court, law clerks and other staff working for the judiciary, and members of the Bar. All the members were appointed in light of their expertise in particular areas, and it has been through this collaborative effort that the Committees have been able to offer outstanding suggestions on how our rules and practices can best be reformed.

### **ADR**

The Subcommittee work in the area of Alternative Dispute Resolution (“ADR”) is one topic I’d like to focus on today. ADR basically encompasses commonly accepted methods of dispute resolution outside of litigating a case in court. The most common forms of ADR include mediation and arbitration.

I would like to thank Senator Tina Muna Barnes for taking the lead in introducing legislation in the area of mediation. As a result of this legislation, the ADR Subcommittee is drafting rules to initiate a pilot program for mandatory mediation in certain types of court proceedings, such as custody and probate cases. Mediation may be appropriate in these types of cases considering the small and close-knit nature of Guam’s community. The mediation process would allow families to resolve these disputes without the stress and trauma of a drawn-out court battle, thereby preserving harmony between the parties. Alternatively, mediation could be a first step in using the court system as a vehicle to reach a more amicable resolution.

Furthermore, the Guam Legislature last Friday passed Bill 172 which establishes Guam as an international arbitration and mediation center. Bill 172 was originally submitted to the legislature by Governor Camacho. While the Bill includes language positioning Guam as an international arbitration and mediation center, the Bill also includes very important components regarding local disputes before the courts of Guam. Specifically, the Bill replaces current general provisions of Guam law that address mediation and arbitration with language that provides for the creation of a comprehensive system of alternative dispute resolution which will greatly improve the efficiency

of how our court's operate. For the last three years, the total cases filed in the Superior Court averaged 10,000 per year. For the same years, the number of cases disposed of averaged 3,500 of all pending cases. As you can see, the judges have heavy dockets.

The work done regarding ADR will hopefully move cases which are suited to mediation and arbitration out of the courts. With fewer cases tracking through the court system, the cases within the system will reach resolution at a faster pace. In addition, we are optimistic that ADR will also reduce the cost of litigation.

#### **Rules of Practice and Procedure**

A few subcommittees have also focused specifically on comprehensively reviewing and updating the rules which apply when a case is actually litigated in our courts. Such review has not been done in over a decade. Proposed revisions are currently being made to the Rules of the Superior Court, the Rules of Civil Procedure, the Rules of Appellate Procedure, the Rules of Evidence, and Civil and Criminal Jury Instructions.

#### **Attorney and Judicial Discipline**

Another equally important aspect of reform within our judicial branch relates to the areas of conduct and discipline for attorneys, judges, and justices. The regulation of attorney and judicial conduct is critical to enhancing public confidence in the judicial system and preserving the integrity of the judiciary. It is important that people trust that the officers of the court, whether in the Bar or on the bench, are acting within the bounds of ethics and with professionalism.

Earlier this year, the Supreme Court promulgated amendments to the Guam Rules of Professional Conduct, which govern attorney conduct within the jurisdiction. These efforts toward policing the Bar, and regulating the conduct of licensed practitioners, enhance the quality of legal representation on Guam and aid in protecting the public from errant attorneys.

Along with regulating the practice of law within the jurisdiction, the judiciary is likewise extremely concerned with regulating the conduct of judges and justices. It is integral to preserving confidence in the system that we have mechanisms in place to investigate and adjudicate claims of misconduct by members of the bench.

The current rules governing judicial discipline contain glaring flaws. Under the current law, it is unclear how to go about filing a complaint of judicial misconduct, or who is charged with investigating and prosecuting such a claim. The current law also does not provide for participation by the public, which may create the appearance of a “closed system.”

The Subcommittee on Judicial Disciplinary Enforcement was convened to review the current statutes regarding judicial discipline, and to draft proposed amendments to the current rules to cure the deficiencies previously mentioned, as well as other aspects of the rules which needed revision.

Utilizing the American Bar Association’s Model Rules governing judicial discipline and incapacity, the Subcommittee on Judicial Ethics has reviewed the procedures of Guam’s existing judicial discipline system and is in the process of completing a comprehensive set of regulations called the Guam Rules for Judicial Disciplinary Enforcement. As contemplated under the ABA’s model system, these rules represent a careful balance of a number of competing interests, including: the rights of judges to fair treatment in the disposition of complaints against them; the public’s concern that complaints against judges are given serious consideration and that judges are held to high standards of behavior; and the interest of the judges and the public in having judicial disciplinary complaints resolved promptly and accurately.

The Subcommittee agreed with the ABA and with many other jurisdictions in finding that public confidence in the judicial discipline system is enhanced when members of the public are included in its disciplinary processes. Their participation provides an important perspective and

avoids the appearance of a closed system. Thus, under the proposed rules, each of the elements of the Judicial Disciplinary Authority will be comprised of an equal number of judges, lawyers and members of the public.

The proposed judicial disciplinary system of Guam will serve to prevent public distrust and cynicism regarding the ability of the judiciary to regulate itself.

The Subcommittee's work product will be presented to Senator Cunliffe as Chairman of the Committee on Judiciary within the next month for introduction and hopefully passage as a law of Guam.

As you can see, the various subcommittees have worked very hard at reforming many different facets of Guam's judicial system. The work by our various subcommittees will positively affect nearly all aspects of dispute resolution. Their efforts work towards promoting the use of methods for dispute resolution outside of the courts, clarifying and streamlining procedure for practice before the courts, and preserving decorum and professionalism by both attorneys and the bench, thereby safeguarding confidence in the judicial system as a whole.

#### **4. Education and Community Outreach**

Improving aspects within the system is not the end. I believe we have a continuing obligation to improve awareness of the issues which are faced by the courts.

This past year the judiciary, along with the Governor's Federal Outreach Program and the University of Guam, sponsored a conference on family violence, which focused on strengthening skills and increasing knowledge for the bench, the Bar, law enforcement, and the community at large. Family violence permeates the community, often making its way to the courts. It is a debilitating problem, which erodes the fabric of the family and society.

The Conference was a success, with attendance from all areas of the local and federal government and the community. Based on the discussions at the conference, Justice Tydingco-Gatewood, assisted by Judge Elizabeth Barrett-Anderson and Judge Anita Sukola, have prepared a "Blue Print" which details what must be done in the area of Family Violence on the part of the Executive, Legislative, and the Judicial Branches of government.

The judiciary will continue to sponsor other seminars which contribute to the education of the public on important issues faced by the courts every day - and which affect the community and society.

#### **D. Budget**

During our efforts towards reorganizing the branch and the processes within the branch, we have remained sensitive to our needs for the upcoming fiscal year, and have been planning accordingly for a budget that is responsible. The judicial branch has taken seriously its stewardship of the resources you have allotted to us.

In a few days I will be presenting a detailed budget for the judiciary for FY2005. That budget will continue to reflect the new conservative and judicious fiscal policy of this judicial administration, and our budgetary request for the next fiscal year will reflect needs which are vital for our core operations. The budget will ensure that we fulfill the inherent mandates expected of the court system. As part of our efforts to construct a responsible budget, we have identified major areas where savings and efficiency will be realized on our end. These include: (1) reviewing indigent defense representation that has been costing us nearly \$2 million annually, and which we will substantially cut down by half; (2) eliminating hundreds of thousands of dollars of annual office space leases by bringing judiciary employees home to the Judicial Center; (3) implementing the streamlined organizational chart which would reduce the divisions of the judiciary from 11 to 6 and reducing administrative redundancies by half; (4) reaping tens of thousands of dollars in savings

from the consolidation of equipment and service contracts; and, (5) restructuring or eliminating existing loan obligations to free up funds for other court functions. All totaled, we expect to yield significant savings.

Complementing our anticipated cost reductions, we foresee an increase in revenue, which will reduce our reliance on General Fund subsidies. We are increasing fees beginning July 1<sup>st</sup> to defray costs associated with indigent defense. We are also launching electronic data access for insurance companies who have agreed to pay for such data.

With realized savings through the reduction in spending and increased revenues, we were optimistic that the judiciary would operate within a reduced budget, while maintaining the same level of service provided to the community. The reality, however, presents serious challenges because of the expiration of significant federal grant programs which came to light in our preparation for the submission of the proposed budget for the next fiscal year. Notwithstanding our aggressive efforts to cut costs and generate revenue, the expiration of these federal grants will cause severe shortfalls in both the present fiscal year and the next fiscal year under a status quo budget.

Most critical is the expiration of federal grants which fund Juvenile and Adult Drug Courts. Public Law 26-125 created Drug Courts on September 4, 2002, with a two (2) year "sunset provision" expiring on September 30, 2004. Presently, portions of the Juvenile Drug Court program, operated by Judge Elizabeth Barrett-Anderson, are being funded from the Superior Court's FY 04 local appropriations due to exhaustion of certain categories of federal program funding. The Adult Drug Court, operated by Presiding Judge Alberto C. Lamorena, continues under full federal funding until November 30, 2004. The shortfall for both programs projected for the Judiciary in FY 2005 is approximately \$392,000 under a status quo budget.

We intend to make every effort to keep Drug Courts going because we believe that therapeutic courts work. In Adult Drug Court, for the first-time drug offender with no prior history of violent crime, it is a chance for a whole new start. More importantly, in Juvenile Drug Court we are the "Gate Keeper" to forestall yet another generation of adult drug offenders. Drug enforcement, when combined with stringent court-monitored drug testing and drug treatment, is a recipe for success for our community. The local statistics are very positive. The recidivism rate for juveniles in the first 2 years of the Guam Juvenile Drug Court program is only 6%.

Aside from these percentages the real impact of drug courts is the cost savings. The National Association of Drug Court Professionals reports that the incarceration of a drug offender may cost up to \$50,000 per person, per year, whereas a comprehensive drug court system typically costs between \$2,500 and \$4,000 annually for each offender.

The math is simple. Drug Courts save money. For this reason, the Judiciary will do everything within its limited resources to continue to sustain Drug Courts. But, without additional funding from the Legislature, drug courts face an uncertain future. We as a community face two options: *pay a little now, or pay a lot later.*

In FY 2003, the Legislature funded the courts approximately \$20 million. Because the Legislature de-appropriated over \$2 million from the Superior Court's budget for this Fiscal Year, we cannot adequately provide funding for these federally funded programs that are expiring. We hope that the Legislature will provide the funds, in the budget appropriation for FY2005, to enable the court to continue the Drug Court, which provides immediate and long-term benefits to the public welfare and safety.

The budget I will be transmitting for the Judiciary in a few days takes into account the cost initiatives we are undertaking and the financial challenges posed by the courts.

In your budget deliberations, we ask you to carefully consider where we stand, what we must do, and what additional programs outside of our core functions you want us to perform.

We at the judiciary have done a lot this year to make ourselves more accountable to the public and those we serve. We continue to do more, with less. Our success has been through the outstanding commitment of the employees of the judicial branch, and the gracious help of the local legal community. While we are committed to providing the best system of justice, we cannot do this without the help of the Legislature. The bottom line is this - the services the judiciary provides, and which affect so many lives, cost money.

**E. Judicial Independence and Efforts to Amend the Organic Act**

I hope that today I have successfully conveyed the judiciary's continued and aggressive efforts to improve the administration of justice, and its effort to be truly accountable to the citizens of this island. As you can see, the judiciary has started reorganizing and restructuring administrative functions, our various committees have worked to improve the rules and procedures which affect practice within the courts, and we have made it a priority to educate the community on important issues which we at the courts face on a daily basis. The judiciary has been able to do all these things, and to realize our goal to improve the delivery of justice to our residents, in large part because the local Legislature has, through P.L. 27-31, given the judiciary the tools, and the freedom, to make improvements with minimal supervision by the other branches. As a matter of good governance, and fundamentally intrinsic to the court's adjudicative role, policy decisions regarding judicial administration should be left to the courts.<sup>4</sup> The Legislature's efforts in enacting P.L. 27-31, which creates a unified branch and places administration of the entire branch in the Judicial Council, is a

tremendous step towards judicial independence - which is not simply an end in itself, but is the means to ensure that the rule of law is upheld.<sup>5</sup>

To ensure that the local Judiciary can sustain itself as a separate, co-equal branch of our island government that is meaningfully independent, it is absolutely necessary to firmly establish the Judicial Branch within the Organic Act. The idea of the judiciary as a co-equal branch of government may appear self-evident, in much the same way we view the notions of equality laid down in the *Brown vs. Board of Education* decision which we commemorate this year. And like in *Brown*, where it took many, many decades to solidify the concept of equal protection in public schools, it has taken us far too long to put in place a local governmental structure which emulates the democratic principles upon which America is founded. The Judicial Council is committed to seeking Congressional consideration, and action, in amending the Organic Act. The Legislature has recently passed a Resolution supporting an amendment creating a judicial branch of the government of Guam in the Organic Act. There presently is local agreement on the issue, and we hope that this unified vision of a truly responsive judicial branch will facilitate action in Congress which will ensure that island residents have a local judiciary in place that is co-equal with the other branches of government.

Until then, we must maintain a governmental structure that attempts to achieve, to the greatest extent possible, judicial independence. Through P.L. 27-31, the responsibility over the

judiciary passed from the hands of the legislators, to our hands in the court, and we recognize that it is an awesome and tremendous responsibility. The responsibility, however, is welcomed, because judicial independence requires that the courts be tasked with governing itself, free from external pressures. With independence comes the requirement that we remain accountable to the public. To that end, the judiciary has, and will continue to use the resources and confidence entrusted to us in a manner which truly serves the public with maximum effectiveness. The residents of the island deserve no less.

I conclude by emphasizing that under P.L. 27-31, we have begun well. But it is only the beginning. While I am proud of the efforts offered by the employees, the judges, justices, and the Bar in helping us to become a better branch of government, we may not simply congratulate ourselves. Rather, we must challenge ourselves to finish what remains to be done. We cannot stop at the foothills when Everest beckons.

Thank You. Si Yu'us Ma'ase. May God bless you and the great island of Guam.

## END NOTES

Certain concepts within this Address, as indicated by note numbers in the text, were inspired by and were derived from other sources, as indicated below.

Note 1 is derived from a keynote address of the Chief Justice of the Supreme Court of Texas. Thomas R. Phillips, *Keynote Address: Electoral Accountability and Judicial Independence*, Address at the Perspective on Judicial Independence Symposium (March 21, 2002), in 64 OHIO ST. L.J. 137 (2003).

Notes 2 through 5 finds their source from a document, which may be made available through the Supreme Court of Guam. Jonathan Lippman, WHITE PAPER ON EFFECTIVE JUDICIAL GOVERNANCE AND ACCOUNTABILITY, CONFERENCE OF STATE COURT ADMINISTRATORS, GOV'T RELATIONS OFFICE (adopted by the Conference of State Court Administrators on December 2001).