



Annual State



of the Judiciary Address

*Honorable F. Philip Carbullido
Chief Justice of Guam*

*Wednesday, April 27, 2005
Atrium, Guam Judicial Center
120 West O'Brien Drive
Hagåtña, Guam*

REMARKS

By

The Honorable F. Philip Carbullido

Chief Justice of Guam

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Judicial Center Atrium

10:00 a.m.

Greetings

Hafa Adai Yan Buenas Todos Hamyo.

Governor Camacho, Lt. Governor Moylan, Speaker Forbes, judicial brethren, senators, mayors, members of the consular corps, our military guests, family and friends:

On behalf of my colleagues from the bench and the employees of the judiciary, let me welcome you to the Courts of Justice.

Delivery of the Address and Recognition of the Guam Legislature

A few weeks back when preparations were being made for today, I asked that the Annual State of the Judiciary Address be delivered *here*, so that all of you can get a better sense of what is going on in this branch of government.

By delivering the State of the Judiciary Address here in the Judicial Center, you and our other elected leaders, and the public, can witness, hear and feel, first hand, the changes taking place under this roof: changes which have been anticipated, not only because they have been promised, but because they are required for the betterment of the judiciary and, consequently, the government as a whole.

I express my heartfelt appreciation and gratitude to you, Mr. Speaker, and your colleagues, for accepting my invitation to convene session here today for the delivery of the annual judicial address.

The Duties of the Judiciary and the Principle of Justice

As you look around, I want you to take a moment to see the faces of my judicial brethren and the employees who come here day in and day out to serve and deliver justice for all who walk through the courthouse doors. Consider the tremendous duties and responsibilities each of them must fulfill in this building. Each justice, each judge, each employee, knows that they work in a place where the differences of our people must be resolved. That is not a very easy thing to do. The courthouse is a place where joy or celebration is rare. It is a place where we see deep sadness marked by tears, where we see pain and suffering etched in faces and heard in voices; yet, it is the place where our people expect, demand, and require fairness and justice.

Let me focus, for a moment, on the principle of justice. It is said that "Justice is Blind." This concept, simple though it sounds, is the very foundation upon which our judicial system is built. Every one of our justices and judges here have taken an oath of office to decide the outcome of a controversy according to the dictates of the law, as constrained by the laws of Guam, the Organic Act of Guam, and ultimately, the United States Constitution – and to do so conscientiously and *impartially*. This means without regard to race, gender, social class, without regard to personal preferences, without regard to outside influence, without playing favorites and politics, and without regard to what the popular opinion is at any given time.

In light of the difficult and many times unpopular cases that the members of the bench have a duty to decide, our independence, authority and integrity may be the subject of challenge and criticism. However, even amidst criticism, justices and judges are bound by ethical rules which, for the most part, make it impermissible to launch a defense or to speak out. And that is not a bad thing at all. In fact, these judicial ethical rules reinforce the fact that we are to *impartially* interpret, defend, and uphold our laws – and do no more. They affirm the concept that justice is truly blind. Justice is about the fairness inherent in making decisions based only upon the facts, even hard facts, and laws, good or bad. In the brew of criticisms, unwarranted or not, we hope and trust that our courts will carry the respect of the people we serve, and survive the attacks on our judicial independence - a characteristic that has made the American judicial system a model for the rest of the world.

Recognition and Appreciation of the Judiciary Employees

With that said, as you look at all who work here, rest assured that despite the climate of conflict inherent in our line of work, this courthouse is a place where our people will be served by the most dedicated public servants of our government -- the justices, judges and employees of the Courts of Justice.

And as their Chief representative, I want to take note of their dedication and devotion to their duties. They strive every day to carry the immense and heavy burden of serving all who walk through these doors and do so in a professional, yet compassionate manner.

Please join me in recognizing and applauding the dedicated employees of the judiciary.

A Unified Judiciary and New Opportunities

Seventeen months ago, the local legislature laid the groundwork for a unified judiciary, giving force to a belief I held from day one of my confirmation into this position as a Supreme Court justice. That is that the goals of the judiciary cannot be divorced from the nature of my position as a public servant – which, quite simply, is service to the public. I knew that true effective public service could not be achieved, successfully, without a judicial framework that was both efficiently organized and independent. In October of last year, through the efforts of Congresswoman Bordallo, the Congress of the United States passed, and President George W. Bush signed into law, the Act establishing the judicial branch of Guam as a third branch of this local government under the Organic Act. This was a momentous act for two reasons. First, it confirmed the confidence placed in the leaders of the judicial branch to carry out our responsibilities free of politics and partisanship. More importantly, it validated the need for the framework necessary for delivering service to the public, that of an organized and independent judiciary.

While the responsibility is welcomed, I also realize that it is tremendous. Such bold opportunity for change does not present itself often, and the decisions we make now are that much more critical. While Justice is blind, the administration of this branch is not without a vision. After fiercely championing judicial independence, I alongside my judicial brethren and employees of the judiciary, are committed to making the right decisions to improve this branch and strengthen our delivery of service to the public.

The Judiciary's Past and Future

Since being entrusted with the basic tools, the judiciary has charted a course that is focused on judicial reorganization, revision, and reform. Our goal is intrinsic to our institution (pause)- to provide justice. And though I am eager to articulate our plans for the future, I cannot do so without speaking also of the past.

Consolidation of the Branch

Accomplishments of 2004

In my judicial address last year, I noted the immediate initiatives that we planned to undertake through the Task Force on Judiciary Consolidation. We have achieved some of those objectives - yielding efficiency and rendering savings. Prior to consolidation, the branch had separate administrations and several divisions that presented itself as a multi-layered maze of bureaucracy which did not function internally, or serve court patrons, in the most efficient manner possible. We now have a new organizational structure that has created a streamlined judiciary.

Last year, I also spoke in detail about our efforts to achieve accountability. Now that we have reorganized and structured our resources, our focus has shifted to optimally maximizing these resources for the benefit of the public - and that is through focusing on review, modification, and in some instances, creation of appropriate internal rules, policies and regulations for improved operations. As stakeholders in this branch, employee representatives of each division of the judiciary contributed to these improvements. Through the hard work of many employees, we now

have new personnel rules which require increased professionalism and standards; new procurement and property rules making it possible for items to be acquired cheaper and quicker, and allowing for proper accounting of such items; we have a new vehicle policy to mitigate and ultimately prevent abuse and neglect; and new travel rules mandating that all personnel, justices and judges included, be cognizant of public dollars, including a requirement that everyone travel economy class.

While probably viewed as meaningless to some, we believe these changes, internal to the judiciary as an organization, are not insignificant or inconsequential. They contribute to efficient operations and are a mark of good governance.

Improvements to the Judicial Center Building and Operations

We have also embarked upon projects to improve the Judicial Building Center. I am sure many of you, in making your way here, were confronted with the issue of parking. The dire need for parking is obvious, and we are finally resolving the issue with the construction of a new parking lot adjacent to the Law Library, which is expected to be completed this fall. We also upgraded our court's security system, and have installed secured access entry systems on most doorways throughout the court building. With this technology, we can limit access to secured areas of the courthouse to authorized employees and visitors. This makes the halls of the court safer for everyone.

Additionally, we have made changes to our administrative rules which will enhance and promote accessibility to the courts, and ensure efficient case flow management. We recently extended the hours for the Superior Court Clerk's Office. The Clerk's Office previously accepted filings from 8:00 a.m. to 3:00 p.m., but now accepts filings until 5:00 p.m. We also promulgated an administrative rule which provides for the computer-generated assignment of cases, so that cases are assigned randomly, fairly, and equitably between the seven judges of the Superior Court.

Working with the Bar to Enhance Services to Practitioners and the Public

Supplementing these in-house efforts is the collaboration and partnership we have developed with the Guam Bar Association. Our intense subcommittee work is spearheaded by the justices and judges, working closely with dedicated members of the Bar. We currently have seventeen subcommittees critically examining all aspects of the judiciary's operation.

Through the cooperative effort between the court and the Bar, we have made considerable improvements regarding conduct and practice before the courts, which will benefit the branch, practitioners, and patrons. I wish to highlight some of these improvements today.

Heightening Ethical Conduct on the Bench

I personally believe that judges and justices should be held to a higher ethical standard than lawyers.

For this reason we formed a subcommittee to rewrite the rules on judicial disciplinary enforcement. For the past eighteen months, the subcommittee has been utilizing the American Bar Association's Model Rules for Judicial Disciplinary Enforcement as a guide in formulating local disciplinary rules. These new rules govern the procedure when an ethical complaint is filed against a judge or justice.

Under the proposed rules, if a complaint against a judge or justice proceeds to the filing of formal charges, all proceedings are public except for incapacity proceedings. This is a complete change from the current disciplinary rules where the proceedings are closed to the public. Public confidence in the judicial discipline system is further enhanced when members of the public are included in its disciplinary process. The participation of the public provides an important lay perspective and avoids the appearance of a closed system. Thus, each of the elements of the proposed Judicial Disciplinary Authority will be comprised of an equal number of judges, lawyers and members of the public. The proposed disciplinary rules were sent to the members of the Guam Bar for comment. I expect that the Supreme Court will act on these rules within the next few weeks.

Protection of Indigent Defendants

We remain committed to the Bar, and have resolved the problems regarding overdue payments to attorneys who represent indigent clients.

In last year's address, I noted that one of our greater concerns centered on indigent defense representation and payment to those attorneys who helped those who need legal services.

I am very happy to note that through a comprehensive overhaul of the appointments process, conducted by the Indigent Defense Subcommittee, the Alternate Public Defender's Office is fully operational. We have reduced the cost of indigent defense from approximately \$2.5 million in FY2004 to a projected cost of \$1.2 million for FY2005, and, as of January of this year, we fully paid off many years of overdue payments to local attorneys for their representation of indigent clients.

Judiciary in Modern Times – Technology and Justice

We have modernized the Judiciary's computer and information systems, and have initiated programs to provide court access that is consistent with the rapid growth in technology.

We have secured a \$250,000 federal grant from the FY2004 National Criminal History Improvement Program for document scanning/imaging. Under this program, criminal dispositions and criminal manual records dating as far back as 1940 will be electronically archived. This

scanning technology will eventually be used to convert all other civil court documents for electronic storage, allowing for high speed searches, and reducing the costs for handling, storing and copying paper documents.

The Subcommittee on Technology and Information Systems keeps us on the cutting edge of automation and use of these tools. The Supreme Court launched its e-filing system last year. Through the work of this subcommittee, we hope to have electronic filing in the works for the Superior Court later this year. Once the entire judiciary is capable, we expect the bar to start transitioning into electronic filing. This will cut the costs of litigation, including paper, printing and delivery costs. It will also reduce the need to expand our space for storing documents.

Alongside of this, the Subcommittee has made our courthouse user friendly for attorneys by providing wireless connectivity. Further, through agreement with the Bar, attorneys now have a fixed work area dedicated for their use on the first floor of the Judicial Center. This allows attorneys a place to work, with access to Internet research and email upon demand, without having to go back to their offices or have employees run back and forth to and from the courthouse.

One very powerful initiative about to bear fruit is the implementation of digital recording in our courtrooms. This state-of-the-art technology will improve storage requirements, enhance the quality of audio recordings, phase out expensive and hard to find parts, and provide greater accessibility through networking users.

Security for Clients and Victims

Another big project in the works, in the area of court technology, is the implementation of video conferencing between the Department of Corrections, Department of Youth Affairs and the judiciary. With videoconferencing, we no longer have to bring incarcerated defendants to the courthouse for hearings. The judge can conduct the hearing from the courtroom, while the client remains at DepCor or DYA and attends the conference through live video feed. This saves money and resources for transportation and manpower, fosters a more secure environment, and reduces contact between the accused and the alleged victims.

Additionally, we have an internet and e-mail policy ready for adoption to ensure that these tools and programs are used properly, responsibly, and securely.

We have made strides in security.

Earlier this month, through the efforts of the Subcommittee on Crime Victims and Witnesses Protection Program, we issued new rules and policies to further ensure the safety of court patrons. New facility security measures and protocol are in place, as suggested in the Crime Victims' Rights Act. We have also formed a Subcommittee on Court Security. The subcommittee is reviewing all aspects of security in our courthouse.

We are also working to improve services to patrons with increasing demands on our system.

Helping Litigants Help Themselves

We have plans to educate pro se litigants.

The *Pro Se* Litigation Subcommittee will examine methods of ensuring that *pro se* litigants are better equipped and prepared, and fully informed of their rights and responsibilities. The subcommittee will also examine the feasibility of lawyers providing pro bono service to educate *pro se* litigants.

We are making efforts to promote resolution of disputes outside of the courts.

The Arbitration segment of the Alternative Dispute Resolution Committee is in the process of finalizing the proposed commercial arbitration rules which will govern matters referred to arbitration at the Guam International Arbitration Center ("GIAC"). The GIAC is expected to not only facilitate the resolution of commercial disputes without the need for traditional litigation before the courts of Guam but to also establish a center for dispute resolution throughout the Pacific Rim region.

Similarly, the Mediation segment of the Alternative Dispute Resolution Committee is examining methods to integrate mediation principles into our existing court system, as alternative dispute resolution methods have been shown to decrease the caseload before the courts and encourage parties to work together to reach a more amicable resolution of their disputes. The amendment of Guam's child custody statute to allow for mediation in child custody cases provided the committee with the opportunity to create the Mediation Pilot Program in disputed child custody cases. The rules were distributed for comment, have been subsequently finalized, and were recently adopted by the Supreme Court.

Modernizing the Rules of Practice and Procedure

We are updating and making overdue revisions to the rules governing practice before the local courts.

The Subcommittee on Rules of Civil Procedure and Superior Court Revisions has completed a redrafting of a portion of the procedural rules governing civil cases in the trial court. This is significant because we have not made any amendments to our rules for more than a decade. Other jurisdictions have timely recognized the inefficiencies and amended their rules and it is about time for us to do the same.

The Subcommittee on Judicial Review and Appellate Rules Revisions will recommend updates to the local rules to cure inefficiencies. This involves updating the rules to account for circumstances not currently covered by our appellate rules. For instance, our current rules do not have specific provisions to govern interlocutory appeals, and the rules are also unclear regarding proceedings commenced under the Supreme Court's original jurisdiction. This causes a lot of confusion for

people trying to file these proceedings in our court. The amendments to the rules will finally clarify these aspects of appellate procedure, which certainly will aid litigants and lawyers who practice in the Supreme Court.

We are also revising the rules of evidence.

The Subcommittee on Rules of Evidence Revisions has worked over the past few months to identify and review the changes that have been made to Rules initially adopted and promulgated in 1979. The committee has proposed various updates to the rules and has also updated the compiler's comments, and inserted local Supreme Court cases to refer to for guidance on how the rules have been interpreted. These amendments will further the purpose of the rules which is to secure fairness in administration, eliminate unjustifiable expense and delay, and promote growth and development of the law of evidence. This way, the truth may be ascertained and proceedings justly determined.

We have also undertaken efforts to standardize our jury instructions.

The Subcommittee on Proposed Criminal Jury Instructions has completed a set of over 120 criminal jury instructions, which are in the final stages of review, before publication to the bar. It is expected that this process will be completed by the end of 2005. It is the committee's goal to have standardized jury instructions available to the criminal bar by next year.

Similarly, the Subcommittee on Proposed Civil Jury Instructions is tasked with drafting jury instructions for civil cases that are legally accurate and understandable to the average juror. The first set of proposed instructions, including areas of law such as evidence, contracts and negligence, have been finalized by the committee and will soon be distributed to the bar.

Through the work of these committees, the inconsistencies of the jury instructions amongst the various judges of the Superior Court will be resolved. More importantly, the new jury instructions will simplify the rules of law for Guam's juries, using language that is easy for non-lawyers to understand.

Access to the Law

On a level having implications not only within the judicial branch, but the island as a whole, we are working to update and publish the amendments to local law.

The Office of the Compiler of Law will review the structure, format, and organization of Guam's laws, rules and regulations, and court reports and recommend ways by which these materials may be more accessible to the general public. The Compiler's Office will consider all means of distribution, including both paper and electronic. The Office is presently working on the publication of the Interim Guam Code Annotated, which will, in the next few months, provide a published update of the GCA for the first time since 1998.

In the meantime, the Compiler of Laws has launched its website. There, you will have access to the GCA. This web version of the GCA is updated regularly, and includes laws passed just this week. Ultimately, the site will include executive orders, AG opinions, and session laws.

We are working with national entities to complement our efforts.

We are working with the National Center for State Courts and the State Justice Institute, to assist in our efforts to become a model judiciary. We recently received approval of our grant application from the SJI to flesh out and implement our blueprint for reorganization. The grant amount is for \$75,000. Our investment and effort will ultimately result in a judiciary that is quantifiably and qualitatively better.

Concern for the Community

In addition, we are committed to working with other local entities to educate the public on various issues affecting our small community.

Just yesterday, the Judiciary of Guam, together with the Governor's Office and the Guam Chamber of Commerce, successfully completed a two-day symposium entitled, "Mandatory Drug Testing Symposium: Do We Pass? Do We Fail?" There, the legal and social impacts of mandatory drug testing, in the public sector, private sector, and in schools, were examined. In light of the pervasive drug problem on Guam, as evidenced by the many residents that enter our Adult and Juvenile Drug Court system, with continued efforts between our local agencies, we hope to begin plans for sponsoring a long-overdue 2006 Drug Summit.

Continued Support

The changes we have made are a byproduct of the collective decision by local and federal leaders to unify the branch. The teamwork exhibited in our efforts to make judiciary-wide improvements, and the shared sense of responsibility between the local judiciary, the national judicial organizations, and the Bar, is a great sign. For that, I am heartened and encouraged.

As we continue our important work, it is necessary that we get the full backing and support of our legislators to succeed. Unfortunately, I cannot speak about the legislators without talking about the budget.

Hard Work and Dedication

We at the judiciary have recognized the need to be responsible and accountable with limited appropriations. With this in mind, we did not go to the Legislature asking for *more* money for operations in fiscal year 2005. We have strived to maintain a status quo budget and have directed all personnel to be resourceful- to make do with what we have.

While we all understand that poor economic conditions made it difficult to fund salary adjustment, I feel that given the vast amount of work undertaken by our employees, it is imperative that they be accorded the increments due to them for the hard work they perform on a daily basis.

The employees undoubtedly need the means to support themselves in this increasingly costly society. It is not right to expect such hard work and years of dedication without any upward adjustments to their salaries, and I hope full increments will be made possible now that the government's fiscal position is improving.

Confidence in the Judiciary – A Fresh Start

I have just spent the last half hour speaking of the efforts we have made and the plans we have for the future. But why? Why do I tell you all this? I tell you this because I believe in an open government. And I believe that you can help. By telling you what we have done, and where we want to go, and how we plan to get there, *you*, as elected leaders, as employees of the judicial branch, as members of the bar, as members of the island society, are now in a position to help. We cannot succeed without your support. And your support for our efforts is impossible without a clear understanding of our goals, past efforts and future plans.

As John Quincy Adams said, "Standing at this point of time, looking back to that generation which has gone by and forward to that which is advancing, we may at once indulge in grateful exultation and in cheering hope. From the experience of the past we derive instructive lessons for the future."

These great words have special meaning for the judiciary of Guam.

I hear so often people criticizing different aspects of the local government. And perhaps it is because people feel that the institutions and habits have been so entrenched in the past that it is fruitless to effectuate any change. The recent Organic Act amendment, on a very real level, created a new judicial branch, for the first time co-equal with the other branches. The truth is, this is not just an opportunity for the judicial branch to grow and to improve, it is an opportunity for all of us, and for this island, to make the right decisions in the beginning, which will guarantee a positive difference for the future.

Let us embrace this opportunity.

Si Yu'us Ma'ase and Thank You for this opportunity to address you.