

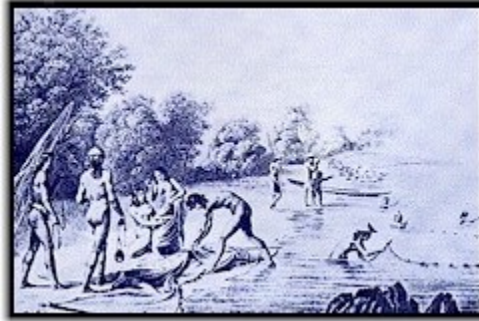
## Judiciary History - Historical Review: "Justicia para todo"



War, diplomacy, social or economic pressure have been used throughout history to resolve disputes. They have literally shaped the world. Today's court systems are a product of man's desire to settle disputes in a more peaceful, equitable and socially acceptable manner. Method of justice continues to evolve in our land with every case or motion brought before the courts.

Today's Superior Court of Guam serves as a forum to resolve disputes locally. And though the system itself is not a product of Guam, the questions and conclusions most certainly are. This booklet is not so much a history of the courts as it is a story of the people of the island and type of justice that has prevailed on our shores.

As we celebrate the opening of the new Guam Judicial Center, it is only fitting that we remember those who contributed to the growth of Guam's courts system. Throughout the past century, the dedicated men and women who served the courts helped ensure that justice continued to prevail on our shores. It is to these fine people of yester year and those who will serve our courts in the future that this booklet is dedicated to. Thank you and Si Yuus Maase.



## Judiciary History - Justice on Guam: "The Chamorros"

*"Yanggen numa'piniti hao taotao, nangga ma na piniti-mu Mase ha apmaman na tiempo, un apasi sa' dibi-mu."*

**Translated:** *When you hurt someone, wait for your turn to hurt. Even if it takes a while, you will pay because it's your debt.*

There is a basic premise among the Chamorro people that if you intentionally hurt someone, or do something wrong, it will come back to you. It is a philosophy in justice that still prevails today. The Chamorro culture is based primarily on "respect" --respect for the elders, for one's parents, for another's property and so forth. It is how approximately 50,000 native Chamorros in over 80 distinct and separate villages lived peaceably on an island 24 miles long and 8 miles wide. All this without a single central form of government to govern them.

In Fray Antonio de los Angeles' accounts of 1596-97 (as translated by Marjorie Driver of MARC), the Chamorro's judicial system, like their government, was centered on the elders. He wrote, "That among those people (the Chamorros), it is the elders who give orders and that everybody obeys them explicitly."

The Chamorros were divided into three rigidly drawn classes -- the Matuas, the Achaots, and the lowest class Manachangs. The Matuas were nobility who not only governed but served as arbitrators in times of disputes. This was both socially acceptable and strictly enforced, regardless of how personal the dispute might be. Fray Antonio wrote:

*"When a husband and wife quarrel, they do not attempt to reconcile, instead they separate. If they fight, the women come and grab them by the hair until the elders of the village arrive and settle the situation -- since they recognize no king (authority) but them. The aggrieved one sends a present, and then a friendly settlement is made, because they do not hold onto resentment, they are quick to forgive."*

## ISLAS DE LADRONES (Island of Thieves)



The island of Guam's first encounter with the new world was a historical, yet unsavory event. Ferdinand Magellan sighted the Marianas on March 6, 1521 -- halfway on the first circumnavigation around the world and almost 200 years before Europeans explored Polynesia. Greeted by curious, yet friendly Chamorros, Magellan would leave three days later amidst a hail of stones hurled by angry natives.

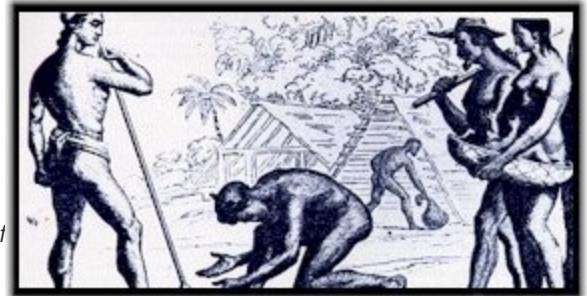
During his first day off the shores of Guam, Magellan's skiff was taken. In retaliation for the theft, Spanish soldiers burned a village, killed and attempted to kidnap a number of natives and exchanged bullet with sling stones in a skirmish on the shore of Umatac Bay. Angered, Magellan would name the islands "Islas de Ladrones" (islands of thieves) -- a name that would carry for the next 150 years. It should be noted that Magellan was killed in an encounter at the very next landfall in the Philippines, giving some credence to the Chamorro proverb, on revenge.

## MINIMAL CHAMORRO PUNISHMENT

The Chamorro people did not rely solely on proverbs and philosophy to ensure justice. These were merely their versions of crime prevention messages. Crime and punishment, disputes and resolutions were as much a part of their world as it is ours.

Stealing for the most part, was non-existent in the islands. Material goods were shared and considered community property to a large extent. Though not without their disputes, crime was so limited that Fray Juan Pobre wrote the following passage:

*"Punishment is not imposed, nor are the indios knowledgeable of any form of it as to impose it. There are, however, one, two or three leading citizens in each village to whom they show degrees of respect."*



According to early accounts, what punishment that did exist among the Chamorros was decided by the elders and could come in many forms. This included exile to another island, servitude, or restitution to the wronged party's family, settlement through gives, and other forms of non-corporal punishment. Even in the case of murder, punishment did not include incarceration, and vengeance was an avoidable act.

*"When on person kills another, if they are from the same village, the assassin will flee and go off to another island so as to avoid being killed by the victim's relatives. He stays away until his father or mother, or he himself, removes from their own home a piece of turtle shell, which is the greatest treasure among these people. This shell, measuring one or two 'palmas' (the length of a man's open hand) together with some rice and a large fish, is taken to the father or to the mother, or to the wife of the deceased and is presented in compensation for the death. Once this has been done, the exiled is notified and is free to return and go about his village without fear. Such is the punishment that is imposed."*

Vengeance, like in any other land, existed among the Chamorros. A number of accounts document numerous incidents of revenge. Fray Juan Pobre tells of the death of a Spanish sailor over a pushing match that occurred. This type of justice is reflected in another old Chamorro saying, "Un dia - menus pago - un dia." One day -- not today -- but one day. Yet, the Chamorro people were not easily angered and were not prone to take offense easily. Writes Fray Antonio de los Angeles (as translated by M.Driver): *"They are a very happy people and fond of tricks. Very rarely they angered; rather, if they have occasion to be angry, they tend to laugh. One of the*



*Spaniards once slapped one of them for making indecent gestures, but he turned his face so (the Spaniard) could strike him again; then he was quite puzzled to see the Spaniard angry. They do the same with one another and are hurt to detect that someone has taken offense."*

## SOCIAL LAWS

The laws of the land were complex, practical and accepted as social etiquette. Some of the examples include: the reefs directly in front of the village belonged to that village and extended far out to where the eye could see, while the lower class was restricted to fishing in the rivers and freshwater areas. A woman could chase an unfaithful husband from the home and retain all his

possession, even if the husband was the village chief (Matapang who killed Pale San Vitores was said to have been in this predicament for awhile prior to his encounter with San Vitores).

The authority of a chief (magalahe) was handed on to the eldest son. The two upper classes could not intermarry with the lower class -- and so forth. What is documented on Chamorro justice is brief to say the least. Disputes were treated as family matters with intervention by the elders when the situation extended beyond the family or village. Even in the few documented skirmishes between rival Chamorro villages, one death could bring an end to the battle, with the participants showing great remorse to the deceased's family. Social exile seemed to be the greatest punishment inflicted, since the defendant became an embarrassment to himself, his family and his village. Such were the people that the Spaniards encountered on their brief stopovers in the Marianas islands for the first 150 years. Their system of justice was built into the familia system of government that ruled their lives on a whole.

## Judiciary History - Justice on Guam: "The Spanish"



On January 22, 1565, Miguel Lopez de Legazpi proclaimed Guam a Spanish possession -- beginning a Spanish era that would last the next 333 years. It would be 103 years before the Spaniards would seek to gain complete control of the island and begin to administer it under a central government. Up until 1668 the Spanish were content to use the Marianas as a port of call, with no Spanish presence in any of the islands.

In 1668, Padre Diego Luis de San Vitores would lead an expedition of missionaries who would attempt to convert the Chamorros to Christianity. Initially successful, the mission would encounter violent opposition with eventually 6 members losing their lives. Among them, Padre San Vitores.

### REBELLION TO TEMPORARY ALLEGIANCE

Using the 1672 martyrdom of Padre San Vitores at the hands of Chamorro Chief Matapang as a catalyst, the Spanish military began a vicious campaign against the native population. The first 8 years of the rebellion saw thousands of Chamorros fall to war and disease. Disturbed by reports of cruelty and massacres of the natives, the Spanish Crown appointed Captain Antonio de Savaria Governor of Guam. He was the given authority to administer an oath of allegiance to the Chamorros and accept them as Spanish subjects. Reeling from the effects of war and disease, the Chamorros sought a welcomed end to the fighting. On September 9, 1681, the Chamorro leadership took the following oath:

We, the governors and other chiefs of places and towns of this island of St. John, called Guahan, the capital and principal of these Mariana Islands, gathered in this church of the Society of Jesus, called the most Holy Name of Mary, in the hands of Reverend Emmanuel Sorzano, Vice-Provincial and Superior of the Mission, freely and spontaneously promise before the Most Holy Trinity, Father, Son and Holy Ghost and before the Most Blessed Virgin Mary and swear with all possible solemnity upon the four gospels to remain faithful subjects of our Kin and legitimate rule, Don Carlos II, Monarch of Spain and of the Indies, and to obey the laws to which his Majesty decides to obligate us.

During Governor Saravia's term, the Chamorros were treated well. He appointed a leading Chamorri, Antonio Ayhi, to the post of Lieutenant General of Guam and placed the village police under y Maga'lahaen Distrito (district Governor) and the village Chiefs. These were but a few of the rights afforded the Chamorros under Saravia Administration.

### THE FINAL CONQUEST

Unfortunately Governor Saravia's term was short-lived. Barely two years after he took office, Saravia would die in November of 1683. The next Spanish Governor would renew attacks on the native nobility in order to bring the Chamorros under complete domination. Weakened and unprepared for the turn of events the Chamorros would fight their last battle under the leadership of the grandson of Taga. Outmanned and outgunned, they would lose decisively.



The Spanish defeated the last remnants of Chamorro rebels on Agrigan Island off the coast of Tinian. The Chamorro rebellion had extended over 20 years (1672-1695), and in the end had seen the devastation of the Chamorro population and their way of life. Yet despite the near annihilation of the Chamorro people, the customs and nature of this culture still permeate in their descendants of today.

During the initial 100 years of Spanish government, what form of justice and the type of judicial system that existed was solely in the hands of the Spanish Governor of Guam, who was appointed by the King. By this time, the population of the Marianas had fallen from an estimated 100,000 people to less than 4,000 (according to a 1710 census commissioned by Spanish Governor Juan Antonio Pimentel). The result of war and disease had taken its toll on the island. Yet crime and punishment were not an overwhelming part of the social makeup of early Spanish Guam. True to the social customs of the native Chamorro population of the previous century, the people of Guam were for the most part peaceful and law abiding in the 1700's.

So much so that Padre Juan Jose Delgado, writes in 1751, "These islanders had such horror of homicide and theft that surely a great injustice is done to their country in the name of 'Robber Islands' (Islas de Ladrones); there has always existed among them such good faith that they never close their houses; they are always open, and no one ever steals anything from his neighbor."

## LAW OF THE INDIES

In 1791, the formal Laws of the Indies were adopted and implemented on Guam. These were a set of rules developed by the Spanish that placed the island under the judicial authority of the Viceroy of Mexico. These laws had been in effect in practice throughout the 1700's, but until formally adopted, the Spanish Governor could exercise his own prerogatives and frequently did.

The Law of the Indies were drawn from Spain's experience with its colonies in the new world. Basically, they allowed a defendant to appeal to the Viceroy of Mexico, should he be dissatisfied with the Governor of Guam's ruling. Lack of communication and travel time made this virtually an impossible if not impractical practice for Guam.



## AUDENCIA OF MANILA

After a 1815 revolt in Spain's colonies of the New World, control of Guam was transferred to the Governor of Manila. Guam became an 'audencia' of Manila via a Spanish edict in 1817.

As best described in Judge Benjamin J.F. Cruz's master thesis on the constitutional and legal history of Guam, the audencia supervised by an officer of the army or navy, who held the title Governor or Teniente Colonel. The Governor was assisted by a secretary or aide who held the title of Sargento Mayor, and was known to substitute for the Governor on occasion. Though the General order issued by the Governor had the effect of statute law, his powers were limited since they had to be approved by the Governor General of the Philippines, who was in turn held in check by the Law of the Indies.

In addition appeals could be made to the Tribunal Supremo of Madrid. The Governor's conduct and policy was examined by a traveling judge, and reported in a paper called a resendencia. It should be noted that the Superior Court of Guam recently discovered and restored a previously undocumented 1777 Spanish resendencia of Governor Antonio Apodaca (1774-76) among its files. This document is on display in the Guam Judicial Center's historical display.

## PUNISHMENT UNDER SPAIN



According to Guam historian Cox (in his book "The Island of Guam"), the administration of justice was mainly in the hands of the Governor. He was aided by the alcaldes in the municipalities who determined punishment and by the gobernadorcillos who carried them out. Explorer and botanist Freycinet wrote in 1819 that for serious cases carrying a "degrading punishment" the governor has to be assisted by a council composed of the sargento mayor, the two captains of the Spanish companies and the government secretary, the latter having no voice.

Frecycinet goes on to describe the punishment meted out by the Spanish Justice system: "Punishments were relatively severe, debt being one of the main offenses. According to Freycinet, after the death sentence the most severe punishments were whipping with a rope or lash, from 500 lashes to a much smaller number according to the gravity of the case. These were given in several sessions, if the number was too much for the culprit to receive at once. The theft of a few effects not belonging to the state was ordinarily punished by 100 blows. Forced labor, with or without leg chains was a punishment less miserable but as humiliating as the preceding. Canning and forced labor were inflicted from time to time on women who voluntarily aborted. Imprisonment was ordered for the less serious offenses. Agana and Umatac had prisons built for this purpose, but besides this there was in each village a special hut with fetters to assure provision for prisoners. Ranked persons either in the army or administration were, in case of legal offense, condemned to exile on Rota, Tinian or Saipan, to the deprivation of salary for a fixed length of time, or to removal to Manila for a more severe examination of conduct."

## Judiciary History - Governor's Authority Removed: "Reformation of Justice"

Up until 1844, the "La Coda Penal," "La Coda Civilde Los Philipinos" and any modifications that the governor ordered, (having the effect of statute law), dictated the procedure of the courts.

The Judge of the Court of the First Instance, presiding over the court of Agana, was the highest judicial authority on Guam. Capital sentences could appeal for review to the courts of Cassation in Manila. The only court appeal superior to the Audencia of Manila was the Tribunal Supreme of Madrid. Few cases, if any, were appealed to either Manila or Madrid because:

*Dubonzet wrote, not because of the scarcity of communication with the Philippines -- there was little recourse to that "tardy justice" and the inhabitants of the Marianas were, besides, so peaceful and law abiding that there was little necessity."*

In 1844, by Royal decree, reforms were effected in Guam's administration of justice. The proclamation insisted that Audencia of Manila be administered by men with legal training. The Governor no longer functioned as Chief Justice since the judicial position was given to a "Lt. Governor" who had legal training and experience. The administration of justice was a cooperative function of several native ministers of justice. The Gobernadorcillos executed the Governor's orders. Each village also had a *teniente de justicia*, a police commissioner, who functioned like a justice of the peace. Two expert judges were assigned the responsibility of ruling in legal matters pertaining to land and salaries. The position of scribe or recorder was filled by two native assistant judges. Control of delinquency problem was the responsibility of the *alguacil* or constable who could compel obedience.



### METHOD OF ELECTING

According to historian Cos, "The Judge of the Court of First Instance presided over that court, and was the highest judicial authority of the islands. Capital sentences required the review and approval of the court of appeals in Manila and Supreme Court in Spain before being executed. The commonwealth's attorney and registrar of land was usually appointed from among the natives."

The Spanish authorities in the 1800's allowed more and local involvement in terms of running Guam's affairs. This included Guam's court systems, wherein appointments to the bench and to the law enforcement were handled by the elections. Utilizing the electoral system, wherein one man represented a distinct area, the positions of judge, village commissioner and police commissioner were selected for the most part, by the people.

The system of election was described by Governor Corte. "The *gobernadorcillos*, *tenientes* and judges received their appointments for a two year term of office as follows. Before the term of those in office had expired, the governor called together a municipal electorate of thirteen, composed of incumbent of the offices of *gobernadorcillos*, six *cabezas de barangays* and six *principals del pueblo*.

The tribal chiefs of the barangays and pueblos were selected theoretically by lot from a group of all the functioning cabezas and principales who had held the office of cabeza, principale, or gobernadorcillos for more than twenty-five years. The municipal electorate of thirteen voted by ballot for minister of justice, each of whom in order to qualify for office, had to be present or past cabezas de barnagay.

## **GUAM BECOMES A PENAL COLONY**

Towards the end of the Spanish era, Guam was utilized as a penal colony for many of the Filipino insurrectionists. In 1871, Governor Marosco became the reluctant host of nineteen Filipino prisoners, eight of them priest. They had lead an unsuccessful revolt against Spanish authorities in Cavite in the Philippines and were exiled to Guam. This was the beginning of what was to be hundreds of exiles who would come to Guam shores. Among them was Apolinario Mabini, the political theorist who fought for Philippine independence from American rule. Guam had no hand in the decision to retain the prisoners nor the length of stay. The penal colony was located in what is now the War in the Pacific park area, in Asan.

## **GOVERNOR'S ASSASSINS RECEIVE CAPITAL PUNISHMENT**

No crime had as much impact on the island in the late 1800's as the assassination of Governor Angel de Pazos Vela-Hidalgo. Shot while taking his evening stroll in the Plaza de Espana, the Governor was assassinated by a 20 year old Chamorro sentry named Jose de Salas y Santos.

Salas turned himself in the next day and said it was part of a plot by 40 Chamorro guards to seize control of the island. The guards were relieved immediately and on January 6, 1885, forty-seven of them were transported aboard the San Quinten to stand trial in Manila. They returned April 7 with four of them sentenced to be executed, 31 to be imprisoned and 12 set free. The four were shot on a beach in Agana.

## **GUAM BECOMES U.S. POSSESSION**



On June 20, 1898, Capt. Henry Glass sailed into Apra Harbor with orders to capture the port of Guam on behalf of the United States of America. On June 21, 1898, the last Spanish Governor, Juan Marina, surrendered to Capt. Glass and ended 333 years of Spanish colonialism. On August 12, 1898, an armistice was reached between Guam and Spain. On December 10 of the same year, the Treaty of Paris officially ended Spanish rule in the Marianas, ceding Guam to the United States as a territorial possession.

## **Judiciary History - Justice on Guam: "Early American Government"**

With the signing of the Treaty of Paris, Guam entered a new era under the American system of democracy. But it would take another 52 years and a World War II invasion before the Chamorro population would be afforded U.S. citizenship that entitled them to specific legal protection under the U.S. constitution and applicable federal law.

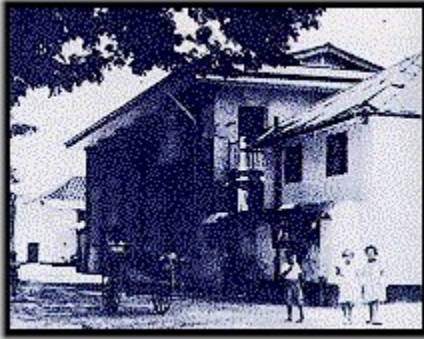
With Guam changing from a Spanish colony to a U.S. possession came the question of legal rights and the type of government the native population would experience under American law. For the initial seven years the existing Spanish judicial system was left intact, except in the area of the appellate court, which was transferred from Madrid's Supreme Court to the sole discretion of the American Governor. The Governor served s the supreme authority in both lawmaking, administration and interpretation of laws for the island.



## SUPREME COURT OF GUAM ESTABLISHED

On April 15, 1900, Guam's first American Governor, Richard P. Leary, established the Supreme Court of Guam to function as an appellate court of the island. Chronicler Roy E. James described the first Supreme Court of Guam as follows: *"The first Naval Governor created a five-man Court of Appeals to serve as a court of last resort until Congress could set up an appropriate appellate court. He appointed himself Presiding Justice of this court but, according to one of his reports, he 'divested himself of all functions as Governor; when sitting on the highest court in the judicial system of the island. It is likely that he thereafter divested himself of all functions as Presiding Justice when the same case came before him for review and approval as Governor."*

### THE COURT OF APPEALS, POLICE FORCE AND CRIMINAL CODE FORMED (1904-1905)



Other than the Supreme Court of Guam, the existing Spanish court system remained in effect until 1905 when the Court of Appeals replaced the Supreme Court of Guam. In the Governor's Annual Report of 1905, Governor Dyer wrote that the new Court of Appeals "consisted of three judges, with at least two members being native Guamanians. For reviewing capital cases however, the number of judges was temporarily increased to five". Unfortunately this did not allow for appeals to be heard by a non-local court -- an issue that Congress would fail to act on until the 1950's.

The early changes in the area of law and order was the work of two American Governors. The Guam Newsletter of August 1911 gives an account of Governor Sewell and Dyer's efforts to reorganize the judicial system on Guam from 1903 to 1905. According to a Guam Newsletter article of August 1911: *"Governor Sewell carried on the work of revision of laws energetically, with special regard to taxes and fines. He reformed the prison laws and promulgated orders for the control of commercial corporations. He also published game laws, and began the revision of the Criminal Code. On January 28, 1904, Governor Sewell was invalid at home, dying soon after he reached the United States... Commander G.L. Dyer assumed command May 16, 1904.*

*Governor Dyer found the bulk of code revision on the way to completion and affairs beginning to shape themselves that some more drastic changes now were ripe promulgation. He established and defined the duties of the Department of Public Health, and strengthened the compulsory education laws. In 1905, he abolished the Supreme Court of the Island and substituted therefor the Court of Appeals. About this time, the Spanish titles of Gobernadorilla, Cabeza, Teniente, and supplant were abandoned in favor of their English equivalent. The excise was the subject of Governor Dyer's orders. In August 1905, he disbanded the Insular Artillery and established the police force."*

### ISLAND COURT CREATED/ISLAND ATTORNEY REDEFINED (1910-1920).

In 1910, Guam's court system would begin to be reorganized by Governor Edward Dorn. The Spanish Court of First Instance would formally become the Island Court on July 15, 1910.

A 1949 doctoral dissertation by Michael D. Zenor describes the problems with the Court of First Instance and the Island Attorney under the Spanish government and in the initial years of the American government (predecessor to the Attorney General's office).



*"Many difficulties were experienced before the Island Court began to function efficiently. Under the existing Spanish law, the Island Attorney had no power to call witnesses; in fact, all he could do was to present the complaint and question the witnesses during the investigation. The judge of the court was required to investigate all cases -- much as the grand jury would -- and then if there was sufficient evidence to bring the case to trial, the judge who had already made the investigation presided. As a result of the great amount of work thus placed on one judge, the court was hopelessly behind in its functions. On July 15, 1910, the Island Court was formally established and the duties of the Island Attorney were defined so as to relieve the judge of his investigatory functions. This new court was composed of two judges and was empowered to try all civil and criminal cases.*

Around 1906, the Police Court was also implemented, followed by the Court of Equity which was established in 1916 along with the Higher Court of Equity and the Special Courts. Each of these courts handled an area of disputes and charges stemming from small claims to murder. The high court of the land remained the Court of Appeals. It would be another 23 years, in 1933, before any other adjustment was made to Guam's court system.

## LOCAL INVOLVEMENT IN THE JUDICIARY

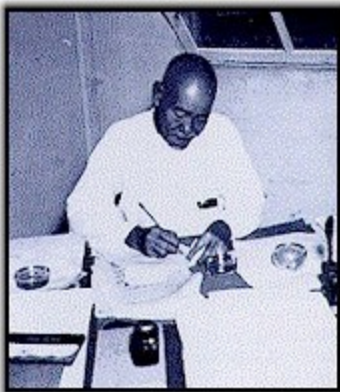
According to Guam historian Beers, *"Because of the relationship occasioned by intermarriage, the Governor in 1910 replaced the native Guamanian judges with commissioned officers in the Navy and Marine Corps, but by 1918 Guamanians were again sitting as associate Judges of the Court."*

Despite this temporary setback, many of Guam's leaders would serve in the Judicial Branch of government. Among these were Judge Joaquin Cruz Perez who was Acting Governor of Guam from February 1 to April 20, 1899 prior to the arrival of Guam's first American Governor, Richard Leary. Perez was appointed Associate Justice in 1915. He had previously served as Justice of the Peace under the Spanish, having been appointed in 1894.

Judge Vicente P. Camacho was reappointed a year earlier, in 1914, after serving as Judge from 1895 to 1911 under the Spanish and early American administration. He would retire in 1947 after serving 49 years on Guam's bench. The longest serving judge in our history.

Others included Judge Manuel E. Sablan who was appointed Substitute Judge in the Island Court of Guam on June 1, 1914 and would eventually preside over the Police Court. By 1921, the court calendar would list A.T. Perez and Jose Roberto as island judges as well. Judge Luis de Torres was listed as a Junior Judge in 1913 while Juan Torres served as Chief Clerk of Court in 1913 and was replaced by J.M. Camacho a few years later.

## ISLAND ATTORNEY (AG)



In 1913, the Island Attorney was Tomas Calvo Anderson. The forerunner to our Chief Prosecutor, he would publish a June 30th year end report that would include 222 complaints that his office presented (5 others were brought by aggrieved party), 46 prosecutions he delivered in an oral trial, 405 witnesses his office examined and 92 civil matters the Island Attorney was involved in. All in all a productive year.

## TAKING THE COURT ON THE ROAD

In 1912, Governor Coontz, at the request of the people, arranged to have an Island Judge tour the outlying towns. Although similar to a Circuit Court, it nevertheless was not official though Guam did have a Circuit Court in existence from 1906 to 1910.

The 1913 October issue of the Guam Newsletter recounts one such visit that went awry.

*"On October the second, the Junior Judge of the Island Court, Judge Luis de Torres, the Island Attorney, Tomas Calvo, the Land Judge Joaquin Perez and party started out on a tour south of the barrios of Agana, to hold court. It was the intention to go to Merizo first by launch, then visit Inarajan, returning later to Agat and Sumay, but the sea was too rough on the second for a launch, so the court's plans had to be changed. They visited Sumay first, then took up cases in Agana.*

*During the trip from Sumay to Agat, an amusing, and what might have been a serious accident took place. The party were traveling in a Chamorro calesa, which is much like a bulcart with high wheels. It has one long, narrow seat and is usually fitted with a pair of stiff springs. While descending the hill on the road to Agat, both shafts of the calesa broke in two right near the bed of the calesa, and down the occupants went, under the heels of the surprised. The party gathered themselves up and luckily no one was more than slightly bruised.*

*...The number of civil and criminal to be tried this year are small, a fact which is very gratifying. They are divided among the different barrios as follows: Sumay...none, Agana...7, Merizo...None, Inarajan...18."*



## A LACK OF JURISDICTION APPEALS, AND JURY

Though the local court system was adequate in handing down local decisions, the judicial system failed in the area of appeals. The following was a famous test case for Guam in the early 1900's.

*Juan de la Cruz Perez was convicted of murder of Vicente Aguon Quintanilla by the Court of First Instance and sentenced to death in accordance with the penal code of the Philippines, the sentence being sustained and confirmed by the Supreme Court of which the governor was the judge. The Spanish law required that all death sentences be appealed to the court of cessation in Manila, but the jurisdiction of the Tribunal Supremo of Madrid had ceased with the American occupation, and, since no United States court had been given jurisdiction, the island judiciary was left in somewhat of a quandary..... The matter was referred by the (Navy) Department to the Office of the Judge Advocate General, which opined that since Congress had not provided the island with a civil government with a judiciary, it would be appropriate and proper for the governor to pardon the man, as the case would thus be kept open for future appeal to such higher courts as Congress might give jurisdiction."*

Without a clear signal from Congress, Perez was later commuted to life imprisonment by the Governor and eventually paroled.

The question of Guam's ability to effectively convict a person under existing American statute was never fully addressed by Congress in the first 34 years of American Government. This include a lack of trial by jury. In August 1929, the following article appeared in the Guam Recorder which described the courts of Guam's legal jurisdiction on island.

*"The jurisdiction of the courts of Guam have been clarified by the Judge Advocate of the Navy and his opinion has been affirmed by the Secretary of the Navy that, 'The courts of Guam are not military courts, but insular courts under the insular government created for the administration of the affairs of the island of Guam. The civil laws of Guam apply to Navy and Marine Corps personnel in Guam, and civilian courts of Guam have jurisdiction to try such individuals for infraction of those laws."*

## CITIZENSHIP, FREE ELECTIONS AND GUAM'S BILL OF RIGHTS

On June 11, 1929, Captain Willis W. Bradley, Jr. was appointed Governor of Guam and a new era of law and political growth for the island was born. Governor Bradley would seek to address specific legal issues confronting the Chamorro people and help bring the question of Chamorro rights to sources beyond the Navy Department, including national attention.

On March 26, 1930, he would issue a proclamation formally establishing Guam citizenship and granting certain rights and privileges and protection to those who were Guam citizens.

Throughout his tenure as Governor and later as a California member to the U.S. House of Representative, he would continue to pursue U.S. citizenship for the Guamanians. Governor Bradley also signed a Guam Bill of Rights which was patterned after the first 10 amendments of the U. S. Constitution. This was not endorsed by the officials in Washington. Later on, certain sections would be incorporated into the law revisions of 1933.

Bradley also abolished the First Guam Congress which up until this time, was appointed by the Governor. He would oversee the first elections of a two house congress; the 16 member House of Council and the 27 member House of Assembly patterned after the Senate and House of Representatives consecutively.

In addition, Governor Bradley would official adopt the Guam Seal and Flag which was first approved by Governor Roy C. Smith on July 4, 1917. Bradley's boldness in listening to the desires of the Chamorro people won him a special place in the heart of the Chamorro people. His term ended on May 15, 1931.



## NEW COURTHOUSE OPENED IN 1929



In October of 1929, a new courthouse was opened in Agana on the 2nd floor of the Robert Coontz building located in the area of the present Pope's statue. It was inaugurated with the help of Governor Bradley and Senior Judge Vicente P. Camacho. The article that appeared in the October 1929 Guam Newsletter describes the new courthouse.

### **QUARTERS FOR THE JUDICIARY**

For the first time in the history of Guam, the judiciary will soon be housed in such a way as to bring credit to the island. The second floor of the building now under construction for the Bank of Guam and other island government activities is being converted into most excellent accommodations for the judges and the courts.

The new layout provides separate offices for the head of the department, the judge of the Island Court, and the Judge of the Police Court. It also has space for stenographers and clerks, two rooms for files and records, a large anti-chamber, and two very satisfactory courtrooms. The large courtroom, to be used by the Island Court, extends practically all the way across the front of the building. The small courtroom, to be used for the Police Court and for promulgating the decrees of the Court of Appeals, is situated in the rear. When our judiciary moves out of its present cramped quarters and becomes installed in its new accommodations, it will have the satisfaction of occupying the finest 'courthouse' in the islands of the South Seas.

### **CODES REORGANIZED**

Up until 1933, Guam still utilized laws, rulings and decisions that were based in part on the Spanish laws of old Guam. According to Laura Thompson's *Guam and Its People*: "Between 1905 and 1910, the office of the Justice of Peace was abolished, the island court was established and the laws were slightly modified, but the Spanish and Filipino codes remained in force for natives, subject of course to the will of the Governor when they were abrogated by executive order of the governor and three new codes (namely a penal code, a civil code, and a code of civil procedure and probate) were promulgated."

In December, 1933, Governor George A. Alexander issued the executive decree ordering the abrogation of all the previous laws and the establishment of three new codes which were modifications of the California Codes. The 1933 edition of the Code of Civil Procedure defined the courts.

When finally printed and promulgated in 1937, most of the laws of Guam were contained in a volume entitled *The Code of Guam*. The divisions of the volume were: "The Penal Code of Guam," "The Civil Code of Guam," "Regulations with the Force and Effect of Law in Guam," and "The Probate Code." Based in part on the California Codes, the Codes of Guam were the first printing of the modern laws of Guam. They were still subject to the will of the Governor, though under the new codes punishment was moderate and greater scope for leniency was given the judges. But it would be in 1933 that the Judicial Branch would completely divest itself of the Spanish system and reorganize completely under American laws and court systems. As for the legal question presented by the lack of an Appellate branch and Jury -- Congress would address that 17 years later in the Organic Act of Guam.



### **COURTS REORGANIZED**

The courts themselves were reorganized and replaced by new courts, namely a Police Court, a Justice Court, and Island Court and a Court of Appeals. The Court of Appeals was the Guamanian's Supreme Court from which there was no other appeal. Note it was Guamanian, as military and American dependents could still legally appeal to higher American jurisdictions. The Court of Appeals was made up of five judges who were appointed by the Governor; the Presiding Justice, (who was usually a Naval officer who served as the head of the Judiciary Department), two naval officers and two Guamanian judges.

The Island Court was the court of general jurisdiction for both criminal and civil cases, except those assigned by law to other courts. This included all probate matters, domestic and criminal cases mounting to felonies. It could also handle cases determined by the Police Court where imprisonment was adjudged or a fine exceeding twenty-five dollars was imposed and appealed to the Island Court. One Guamanian judge made up the Island Court in 1949.

The Justice Court, which was presided over by one Guamanian judge, had jurisdiction in criminal cases of misdemeanor only involving a fine of over one hundred dollars or imprisonment for more than six months or both and a fine of less than three hundred dollars or imprisonment for less than one year or both. This court also handled "all cases where the demand, exclusive of interest or value of property in controversy, amounts to seventy-five dollars or less; and in all cases of forcible entry and detainer where the rental value is ten dollars or less per month; in all cases of damages where the whole amount claimed is less than one hundred dollars, and in all cases to enforce and foreclose liens on personal property, where the amount of such lien or the value of such property amounts to seventy-five dollars or less." It was the predecessor for the small claims court of today and handled collection of debt with the vast majority being twelve dollars or less.

The Police Court handled "criminal cases amounting to misdemeanor only where the penalty does not exceed imprisonment for six months or a fine of one hundred dollars or both." The majority of cases handled in Police Court involved violation of sanitary regulations, traffic rules and drunkenness. In cases of misdemeanor in the outlying areas where the fine did not exceed five dollars, the municipalities commissioner could be called on to rule on the case. For the most part, public drunkenness was the chief charge handled by the Commissioners.

The Department of Law as administered by the Attorney General who was an appointed naval officer. He was assisted by three island attorneys, who were Guamanians and also appointed by the American Governor.

### **CRIMES AND PASSIONS OF THE 20'S AND 30'S**

As the Courts and laws were changing , so, too, were the people. Yet the cases before the bench were no less serious and important to each individual involved. But in researching some of the work, it was nonetheless interesting to run across some rather bizarre incidents or quirks of the time. Though crime is not exactly a positive promotion of the era, it nevertheless does capture a sense of the people and pressures of an era in the past. Some examples are:



### **QUARREL OVER POSSESSION OF A CHICKEN RESULTS IN HOMICIDE**

#### **Son Kills Father With a Machete**

Sunday, 17 February -- Enrique M. Chiguina, a native of Guam, 24 years of age, surrendered himself to the police with the statement that he had just seriously injured his father, 51 years, on their ranch, in a quarrel over the possession of a chicken. The police investigation disclosed the fact that the injured man had died from a knife thrust in the breast.

During a drinking revelry a quarrel arose between the father and son over the possession of a chicken, after a fist encounter in which the father had his face slapped by the son, he drew his machete and attacked by thrusting as the other retreated. When but a few feet separated them, the son drew his machete and threw it. The blade entered his father's breast, who grasping the wound with one hand, replaced his machete in its scabbard with the other, and staggered to the ranch house, where he was found dead by the police. The trial is in progress as we go to the press.

#### **Masquerader Caught Picking Pockets**

Masquerading as a woman, Antonio T. Atoigue, native of Guam was caught in the act of picking the pocket of a U.S. Marine, New Year's Eve. The supposed member of the feminine sex becoming familiar with the Marine who happened at the time to be in the vicinity of the Agana Police Station, put her arms around him and was caught attempting to pick his pocket. The masquerader was placed under arrest and proved to be a man dressed in women's attire.

Needless to state, this modern Chamorro spent the first day of the new year in jail, and some months will no doubt pass before he will be at liberty to masquerade or to ply his trade as a pickpocket.



## **PAROLED ON DEATH BED**

Maria S. Leon Guerrero, 34 years of age, serving a life sentence as an accomplice to the murder of her lover for which her husband paid the extreme penalty ten years ago, committed suicide March 5 while under treatment in the Naval Hospital for an advanced stage of tuberculosis, by taking a large dose of bichloride of mercury. The recent murder of Vicente Chiguina by his son, and the parole of another woman serving a life sentence, coupled with her incurable condition, is thought to have been the cause of her suicide. Acting upon a request for a pardon before death, Governor Shapley granted her parole, satisfying her dying request that she might not leave this world a prisoner.

## **GOVERNOR SIGNS DEATH SENTENCE**

Antonio M. Cepeda to Die April 3rd  
Governor Root, on March 23, signed the order of execution in the case of Antonio M. Cepeda, 22 years, a native of Guam, convicted of the murder of Jose S. Quintanilla, November 2, 1932.

After long deliberation over the verdict of the Court of Appeals, which sustained the sentence of the trial court in the case of Cepeda, charged with murder in the first degree, Governor Root signed the order of execution. Cepeda will suffer the extreme penalty by hanging April 3rd. The execution will take place at the Libugon Prison Farm between sunrise and sunset on the above date.

Cepeda, after a quarrel, shot Quintanilla down in cold blood, and from ambush, on a trail in the district of Yigo. Cepeda's brother, Pancraccio, was a companion of the murdered man at the time of the crime and it was mainly upon his evidence that the murderer was convicted. Pancraccio saw his brother Antonio escaping with a gun in his hands through the brush from his place where the shot was fired.

## **CLEMENCY FOR VIOLATION OF LIQUOR LAW**

In keeping with the policy of reducing the severity of the penalties for violations of the Guam Liquor Laws, executive clemency was extended on 16 and 17 May, 1933, to 13 persons with unexecuted sentences for such violations. In general, this clemency consisted of the remission of one-half of the original fine or the part thereof remaining to be paid if less than one half of the original fine.

## **RITA CRUZ SENTENCED TO LIFE IMPRISONMENT**

Rita Pangelinan Cruz was sentenced by Judge Vicente P. Camacho, to life imprisonment for the murder of Jose Cepeda Munoz, 37 years, on the 30th of October, 1932.

The body of Munoz was found on the Barrigada Road near Padre Palomo, San Antonio, where it had been dragged after death which had resulted from strangulation in the home of the Cruz woman.

Evidence produced at the trial incriminated Joaquin Pangelinan Quidachay, 18 years of age, a nephew of the convicted woman, it having been proved that he had taken part, if not in the actual killing, at least by assisting in an endeavor in hanging the body to make it appear that Munoz had committed suicide.

## **TAP THAT TUBA**

The penalty for tapping trees for tuba without a license shall be an Executive fine of five dollars, for each tree so tapped; and the absence of the above mark on the trunk of a tapped tree shall be considered sufficient evidence for imposing the fine.

## **PRE-WAR COURT SYSTEM**

Historian Paul Corano and Pedro C. Sanchez in "A Complete History of Guam," described the pre-World War II make-up of Guam's court system:

At the beginning of 1941, Captain Terrell J. Crawford, USMC, was judge of the Police Court. On June 6, 1941, when Captain Crawford left the island, Judge Manibusan became acting judge of the Police Court as well. The Island Court was a court of general jurisdiction. It handled most cases that were not specifically assigned by law to other courts. In addition, it heard all cases involving matters of probate, appointment of guardians, trustees and receivers, and all actions for the annulment of marriage and for divorce. This court also served as an appeals court for certain cases that arose in the lower courts. The Honorable Jose M. Camacho presided over the Island Court. Judge Camacho died on October 27, 1940, after having served the naval government for thirty-eight years.

The Court of Appeals was the highest court in the island's judicial system. It consisted of a presiding justice and four associate justices. During 1940-41, Lieutenant Commander Roger Edison Perry, USN, was the presiding justice. Associate justices were Lieutenant Commander Tilden I. Moe, USN; Lieutenant John F. Castree, USN; the Honorable Vicente P. Camacho; and the Honorable Ramon M. Sablan. In November 1940, Associate Justice Camacho resigned. The Honorable Jose L.G. Rios was appointed to fill the vacancy.

The Court of Appeals heard all criminal cases sent to it by the Island and Justice Courts, and all civil and special cases appealed from the Island Court. Whenever the Island Court ordered a prison sentence of more than one year, the judgment did not become final until the case was reviewed and approved by the Court of Appeals. Besides these duties, the Court of Appeals had the power to issue writs of mandamus, certiorari, prohibition, and habeas corpus. In addition, it could issue any other writs necessary for the proper exercise of its powers as an appeals court.

Department of Law: The legal department of the naval government was administered by the attorney general who was appointed by the governor. This department dealt with all legal matters in which the government was in any wise interested. It also handled all matters of public prosecution in the courts. As an extra duty, it processed all requests for the transfer of land. Since real property in Guam could not be sold without the approval of the governor, requests for such sales had first to be investigated by the island attorney. The incumbent at this time was Edward C. Duenas, who was beheaded by the Japanese toward the close of World War II.

## Judiciary History - Justice on Guam: "Post-World War II"

On December 8, 1941, the island of Guam was invaded by Japanese forces and occupied until July 21, 1944, interrupting the growth of the judicial systems that was taking place. Yet it itself, the aftermath of the war would bring about great changes in Guam's economical, social and political make-up. Changes that would affect the judicial system as well.

### TEMPORARY POST-WAR NAVY COURTS (1944-1950)



"When the American forces liberated the island, a state of emergency martial law was declared and Exception Military Courts were created for the trial of civilians on Guam. The Summary Provost Court was presided over by one naval officer. This court had jurisdiction over cases punishable with fines of less than one hundred dollars and imprisonment not in excess of one year, or both. The next court in the new system was the Superior Provost Court which consisted of at least one officer. It had jurisdiction over cases with unlimited fines and imprisonment of less than ten years. The Military Commission, the highest court, tried all the more serious crimes.

The courts operated without the benefit of a jury. There was no higher court to appeal a decision, but all cases were reviewed by a higher authority from the Governor's legal staff. The approval of the Secretary of the Navy was required before execution of criminal case sentences. The Secretary's review remained in existence only while the military courts were functioning.

Judge Vicente P. Camacho and Judge Jose C. Manibusan were the only Guamanian judges when the Naval Government was reestablished in 1946. When Judge Vicente Camacho retired in 1947, Governor Charles A Pownall appointed Island Attorney Vicente C. Reyes as judge. *The most controversial issue rising out of Land and Claims Commission was the acquisition of land.*

## LAND AND CLAIMS COMMISSION:

On April 23, 1945, Congress passed the Guam Meritorious Claims Act, forming the Land and Claims Commission, which began its task as the government's real estate agency. As part of its collateral duties, it reviewed and processed war claims by the Chamorros for loss and damage to real and personal property and, in particular, for personal injury and death claims. 711 injury and death claims were filed as of 1947 for the total amount of \$1,396,005. The U.S. navy had placed a ceiling of \$4,000 on each death claim, of which only one was awarded. The others fell far below this amount.

The most controversial issue rising out of Land and Claims Commission was the acquisition of land. According to Guahan/Guam History of our Island, (Pedro C. Sanchez): *"In their eagerness to obtain signatures of consent, some Navy and Land Claim officials and agents were accused of intimidating and threatening landowners, most of whom were plain ordinary islanders, unsophisticated and uninformed about their legal rights. To make matters worse, Guam, in the late forties, had less than five private attorneys, only one of whom, namely, Paul Dungca Palting, had a university law degree and stateside practice. Without private attorneys experienced in real estate and land condemnation proceedings to defend them, Guamanian landowners were no match for the well trained lawyers and agents of the Navy and Land Claims Commission. Moreover, Guamanian landowners found Superior Court Judge John Fisher, who was selected from the states and appointed by the Navy, taking the side of the Navy during court proceedings."*

## SUPERIOR COURT ABOLISHMENT VETOED

On November 1, 1947, the Guam Congress approved the establishment of the Superior Court. One year later, it passed a bill to abolish the court. Apparently, the Guamanians were dissatisfied with the actions of the court in land condemnation cases. Dissatisfaction was also expressed over the dual function of the Superior Court judge in acting as Presiding Justice of the Courts of Appeals. On January 3, 1949, the Governor vetoed the bill to abolish the Superior Court, giving as his reasons the large volume of land matters requiring its attention. Superior Court Judge Fisher was given exclusive jurisdiction to hear and settle land disputes arising out of the military land taking. By the end of the Navy Administration in 1950, about one third of Guam was safely in the hands of military and federal government.

## GUAM ORGANIC ACT

On July 15, 1946, the first bill providing for an organic act for Guam as well as citizenship for its people was introduced by Rep. Robert A. Grant in the form of H.R. 7044. This provided that Guam be accorded the status of territory with the privilege of sending a delegate to the U.S. House of Representatives. This bill was never even reported out of a committee as was the fate of all the bills introduced during the 79th Congress.

*"...the Guam Congress approved the establishment of the Superior Court. One year later, it passed a bill to abolish the court."*

## ASSEMBLYMEN WALK OUT AND DISMISSED



The issue of local authority came to a head when the House of Assembly of the Guam Congress subpoenaed an American Civil service employee of the Navy who might have knowledge of an attempt to take advantage of Guam's import-export market. He refused to answer the subpoena and was supported by Governor Pownall. Angered and frustrated by the lack of respect and authority afforded them, the Assemblymen walked out en mass on March 6, 1949. Governor Pownall requested them to return and when they refused, he dismissed them.

This dramatic encounter received national attention, and widespread publicity, that generated a great deal of support for home rule and U.S. citizenship for the Guamanian people. Though the Assemblymen were reinstated by the Governor, U.S. citizenship and some form of home rule was a foregone conclusion.



## PRESIDENT TRUMAN ISSUES INTERIM LAW

To pacify the island until the U.S. Congress could pass an Organic Act, President Truman issued and Executive Order No. 10077 which ordered:

1. The administration of the island of Guam is hereby transferred from the Secretary of the Navy to the Secretary of the Interior, such transfer to become effective on July 1, 1950.
2. The Department of the navy and the Department of the Interior shall proceed with plans for the transfer of the administration of the island of Guam as explained in the above mentioned memorandum of understanding between the two departments.
3. When the transfer of administration made by this order becomes effective, the Secretary of the Interior shall take such action as may be necessary and appropriate, and in harmony with applicable law, for the administration of civil government in the island of Guam.
4. The executive departments and agencies of the government are authorized and directed to cooperate with the Departments of the Navy and Interior in the effectuation of the provisions of this order.
5. The said Executive Order No. 108-A on December 5, 1898, is revoked, effective July 1, 1950.

*"The people of Guam were afforded the opportunity to set and administer policy and laws for the island of Guam."*

In accordance with this order, Mr. Carlton Skinner, a public relations officer in the Department of Interior, was selected by the Interior Department, nominated by the Navy Department and then appointed by the President to serve as Guam's first civilian Governor. He took the oath of office on September 17, 1949.

On October 3, 1949, the House of Public Lands Committee reported out H.R. 4499 which would eventually be passed into law containing provisions known as the Organic Act of Guam. Guam now is a U.S. Unincorporated Territory, was granted, among other things, some leeway in forming the Judicial Branch of Government of Guam. The first such rights afforded them since the Chamorros lost to Spain in 385 years hence.

## GUAM'S JUDICIAL BRANCH OF GOVERNMENT

On August 1, 1950, President Truman signed into law the Organic Act of Guam which gave Guamanian certain rights and protection under the U.S. Constitution. The people of Guam were afforded the opportunity to set and administer policy and laws for the island of Guam. Included in this was the Judicial Branch of the Government of Guam.

## LOCAL COURT SYSTEM ORGANIZED

In 1950 as part of the Judiciary Act, a judiciary reorganization bill was prepared to strengthen the island court system. Judge Albert B. Maria, then Chairman of the United States Judicial Conference, Judge of the Third Circuit Court of Appeals, and Chief Judge of the Emergency Court of Appeals, came to Guam to assist in the review of the court system and the preparation of the judiciary bill. He was assisted by Attorney John Bohn in the development of an act that vested in the District Court of Guam territorial jurisdiction in civil cases having a value of more than \$2,000 and, in criminal cases, jurisdiction over all felonies.



Known as Public Law 17, the "Judiciary Act" abolished the Justice Court, the Traffic Branch of the Police Court, and the Court of Appeals. The duties of the latter were assumed by the District Court. Before the Act, the court system consisted of the Court of Appeals, the Island Court and the Police Court. The reorganization reduced the number of courts to the District Court of Guam, the Island Court, the Police Court and the Commissioners Court.

The Judiciary Act gave the Island Court of Guam jurisdiction over misdemeanors and civil cases having a value of less than \$2,000 and created a Police Court with jurisdiction over misdemeanor cases in which the maximum penalty did not exceed a fine of \$100 or imprisonment of six months, or both.

The Act also created a Commissioner's Court to be presided over by the commissioner of each municipality to deal with petty offenses for which the maximum punishment did not exceed \$5. The law also defined the powers, qualifications, and disqualifications of judges and referees and specified the duties of court clerks, reporters, marshals, the attorney general, and the island attorney or prosecuting attorney. It provided requisites for admission to the practice of law and for a probation system.

After 1950, the District Court of Guam, which had the same jurisdiction as a District Court in the US over federal questions, was established. For the first time, the judiciary in Guam, exercised its powers independent of the executive branch. However, a dual judicial structure began -- the District Court with responsibility both for federal and local cases, and the Island Court established by the Guam Legislature with responsibility strictly for local cases.

## DISTRICT COURT AND APPELLATE PROVISIONS

In Guahan/Guam A History of Our Island (historian Sanchez) sets the following description of the effect of the Organic Act on the Courts and its appellate provisions: "Section 22(a) of the Organic Act established the third branch of the territorial government. It created the District Court of Guam, a court of record, and vested it with judicial authority, as well as, "in such court or courts heretofore or hereafter established by the laws of Guam."

*The District Court of Guam was given the jurisdiction of a District Court of the United States, "in all cases arising under the Constitution, treaties, and laws of the United States." It was also given "original jurisdiction in all other cases in Guam," provided the jurisdiction had not been transferred by the Legislature to other court or courts established by it.*

*The District Court also serves as a court of appeals from the island courts. Appeals from the District Court go to the Court of Appeals of the U.S. Ninth District Court in California and from there to the U.S. Supreme Court. A few Guam cases have reached the Supreme Court. Before the passage of the Organic Act, there was no appeal beyond the Naval Governor of Guam.*

*The District Court of Guam's jurisdiction and procedures follow U.S. district courts in the U.S. mainland. The jurisdiction and procedure in the courts established by the Legislature are as prescribed by the laws of Guam.*

## PRESIDENTIAL APPOINTMENT OF DISTRICT JUDGE

*Under a provision of the Organic Act, the President of the United States appoints the judge of the District Court of Guam, with the advice and consent of the U.S. Senate..... The Act provided for federal government financing of the District Court.*

*In the first 35 years, the turnover in District Court judges had been minimal. The Honorable Paul D. Shriver of Colorado served as the first Guam District Court judge. After completing his term, he was relieved by the Judge Eugene Gilmartin in 1956. Judge Gilmartin died in office in 1961. Judge Shriver returned to the District Court bench and served for another 8-year term. When he retired from the bench, Judge Shriver was succeeded by Island Court Judge Cristobal C. Duenas, a Guamanian graduate of the University of Michigan law school. Judge Duenas was reappointed after his first 8-year term. In 1990, he retired.*

*When Judge Lujan retired, the Police Court was abolished in a court reorganization act and its duties were assumed by the Island Court.*



## LOCAL JUDGESHIP IN LOWER COURTS

The three Guamanian judges who were holding judgeships under the Naval Government were named by the Governor, with the advice and consent of the Guam Legislature, to the island courts under the new Act. They were Judge Jose C. Manibusan, who became the first senior judge of the Island Court, Judge Vicente C. Reyes, and Judge Francisco G. Lujan, who

remained with the Police Court. As the number of court cases increased, Judge Joaquin C. Perez was added to the Island Court as a fourth judge.

Upon the retirement of Judge Manibusan, Judge Perez became senior judge. When Judge Lujan retired, the Police Court was abolished in a court reorganization act and its duties were assumed by the Island Court.

### **Trial by Jury**

The Organic Act was silent on the right to trial by jury and left it up to the Guam Legislature to decide if and when to introduce it to the Guam courts. At the time of the passage of the Act there was the prevailing opinion that the small size of the population of Guam, the close family ties, the extended family tradition, and a whole system of other relationships which Guamanians formed among themselves would make it difficult to find an impartial jury. The matter, however, was decided with a relatively short period of time not by the Legislature but by a federal court in a criminal case entitled *Government of Guam v. Hatchett*.

### **THE HATCHETT CASE**

In December 1952, Hatchett was arrested on a felony charge of involuntary manslaughter and arraigned, by information, before the District Court of Guam. There being no jury system on Guam, he was not indicted by grand jury as he would have been in the mainland. The District Court found Hatchett guilty as charged. He appealed to the Court of Appeals of the Ninth Circuit. The Court of Appeals ruled in a landmark decision that the prosecution of a felony must be brought by grand jury indictments unless the accused person waives such right. With this decision establishing the right to trial by jury on Guam, the Third Guam Legislature quickly passed Public Law 42 which provided a jury system for the island courts.

### **JUVENILE COURT FORMED**

The first Guam Legislature passed a Juvenile Delinquency Act in 1932 which revised the procedure for handling young offenders. Prior to 1952, juveniles were treated as if they were adult criminals. The Juvenile Court was created as a division of the Island Court.

### **NEW COURTHOUSE**

In 1947, Guam would open a new courthouse in Agana to replace the old courthouse which was located in the Robert Coontz building that was destroyed in the liberation of Guam. The courthouse would be transferred to the Legislature in the late '60's. On February 27, 1968, the court would open up its new courthouse located in West O'Brien Drive directly across the Flores Library.

### **SUPERIOR COURT OF GUAM FORMED**

In 1974, Public Law 12-85, the Court Reorganization Act would substantially alter the judicial jurisdiction of the local island court and rename it the Superior Court of Guam. The Superior Court was given jurisdiction over all cases arising out of Guam laws. The District Court retained its appellate function. Under the act establishing the Superior Court of Guam, the title of senior judge was changed to Presiding Judge of the Superior Court. Chief Judge of the Island Court Joaquin Perez became Guam's first Presiding Judge. He was succeeded upon his retirement by Judge Paul J. Abbate, Jr.

### **JUDGES OF THE SUPERIOR COURT OF GUAM**

Named to the bench between the sixties and eighties were Judge Paul J. Abbate, Jr., who was attorney general prior to his appointment; Judge Joaquin V.E. Manibusan who served as chief clerk of court for several years; Judge Vicente C. Reyes who was Guam's first island attorney; and Judge Richard Benson. Also named to the Superior Court were Judge Janet H. Weeks, the first and only woman judge in the entire history of the island; as well as Judge John Raker who died while in office in 1984. Also appointed to the island's court system was Judge Ramon Diaz, the first Filipino named to a judgeship since Judge Pancracio Palting was appointed judge in the twenties.



Two young Guamanian attorneys were named Superior Court judges in 1985. They were Judge Peter C. Siguenza, Jr. and Judge Benjamin J. Cruz. They were the youngest ever to be named to the bench. Both graduated from American law schools.

On July 14, 1988, the Honorable Alberto C. Lamorena III succeeded Judge Abbate as the third Presiding Judge of the Superior Court of Guam. A descendant of both Chamorro and Filipino heritage, he would be the youngest presiding judge appointed to the Superior Court of Guam. A former attorney, senator and chairman of Ways and Means, he was appointed by Governor Joseph Ada and confirmed by the 20th Guam Legislature.

## **Judiciary History - Justice on Guam: "A Growing Court"**

### **APPOINTED BY GOVERNOR/RETAINED BY PUBLIC VOTE**

Judges of the Superior Court are appointed by the governor with the advice and consent of the Legislature for a term of eight years. If they wish to continue in office, their names are placed on the ballot at a general election. They must garner at least 50 percent plus one favorable vote of the number of cast ballots to remain in office. Judge Richard Benson and Judge Joaquin E. Manibusan were the first to be placed on a ballot. They both received the overwhelming approval of the voters. Presiding Judge Abbate, Judge Janet Weeks and Judge John Raker received overwhelming voter support in 1984. Both Judge Weeks and Judge Manibusan were retained in the election of 1990 garnering over 70% of the voters approval.

### **DISTRICT COURT JUDGE RETIRES**

In November of 1990, Judge Cristobal C. Duenas retired as judge of Guam District. Elevated to this position in 1969, Judge Duenas as the first Guamanian to serve on the prestigious federal bench. He began his career on the bench in 1960 as a Judge of the Island Court.

By the late 1980's, the Superior Court of Guam had expanded to include five divisions: General Administration, Financial Management, Marshals, Probation, Courts and Ministerial. Facing a rising caseload, an expanding prosecution arm of the government, and a growing population, the court began implementing programs designed to alleviate and properly handle the growth.

The six judges of the Superior Court faced not only a rising caseload, but a diversification in types of cases they were confronted with and a growing sophistication in litigation. Forced to deal with a rapidly changing lifestyle on Guam, the Superior Court under the leadership of Presiding Judge Alberto C. Lamorena III, began to address the changing issues of Guam.

### **CODIFICATION OF GUAM LAW**

In the seventies, the Legislature established the Compiler of Law Office with the Attorney General in order to update and organize the local laws. By 1987, the Legislature began to codify Guam's laws overall. The Superior Court of Guam oversaw the promulgation and establishment of proposed Rules of Civil Procedure, Rules of Court for Small Claims, Child Support Rules as well as indexing local decisions of the courts. In addition, the court established direct computer hook-up with Westlaw, a national index of laws and court decisions.

### **BAR EXAM UPGRADED**

By 1991, there were approximately 300 attorneys practicing on Guam in both the private sector and government of Guam. The court sought to ensure the quality of law practiced on island. In November 1988, the Board of Law Examiners adopted the rule that all applicants wishing to practice law on Guam must pass the Multistate Professional Responsibility Examination (MPRE) based on a specific standard scoring system. In addition, the court lobbied with the Legislature to enact a law disallowing unapproved American Bar Association Law School graduates from taking the bar exam straight out of graduate school.

## **FAMILY COURT**

1987, in order to address a 70% rise in juvenile crime, family court was established under Judge Benjamin J.F. Cruz. The court implemented a Pre-Adjudication Diversion Program which was designed to "rescue" non-felony offenders from formal procedures associated with coming before family court, placing the juvenile client in an informal probational status. In addition, the court established parenting programs and other counseling programs designed to deal with the rising juvenile delinquency problem.

## **ALTERNATIVE SENTENCING**

In the late seventies, the Superior Court of Guam established the Alternative Sentencing Program for criminal offenders. Faced with overcrowding at the Rosario Detention Center, the judges now had the option of placing defendants on community service programs. Implemented by the court with contributions by others, including, former Presiding Judge Paul J. Abbate and Sister Mary John Cristobal, the Alternative Sentencing program had expanded by 1990 to overseeing community service, a marriage reconciliation program, a parenting group, an alcohol treatment program, court crime prevention for juveniles and a petty theft diversionary program.

## **CLIENT SERVICES DIVISION**

Realizing that incarceration in itself was not an answer, the Superior Court established a Client Service Division in order to address the counseling and psychological needs of clients and victims. The division was designed to diagnose, recommend and provide treatment to criminal offenders, victims, and family members involved in crimes such as sexual abuse, rape and other violent crimes.

## **SMALL CLAIMS COURT**

On June 13, 1989, the Guam Legislature implemented P.L. 20-28, which raised the filing limit in Small Claims Court from \$1,000 to \$10,000 and incorporated eviction matters. In addition, the Guam Rule of Civil Procedure for Small Claims were prepared and organized for eventual review and adoption by the court and Legislature.

By 1989, the Judicial Council had approved the proposed revision of the Guam Rule of Civil Procedure and submitted to the Guam Legislature for review and ratification.

## **VICTIM BILL OF RIGHTS**

In addition, a Criminal Injuries Compensation Commission

In 1990, the Legislature adopted a Victims Bill of Rights at the request of the Presiding Judge which not only encompassed a victim's right to restitution, but guaranteeing the basic expectation that offenders be detained in custody, tried by courts and punished. In addition, a Criminal Injuries Compensation Commission was reestablished by the Legislature at the request of the court, which would assist in the compensation of a victim over and above the court ordered restitution. Legislation was also adopted requiring notification of crime victims when his or her assailant completed their jail term or was released on bail.

## **CHILD SUPPORT UNIT ESTABLISHED**

With a rise in the occurrence of divorces on island and the problem of collecting child support, the 20th Guam Legislature enacted the implementation of the new Child Support Enforcement Unit. In addition, rules and regulations governing this division was adopted.



## **COURT PROGRAMS INCREASE EFFICIENCY AND EDUCATION**

In order to increase the efficiency and effectiveness of the court's operations, the court formed an Automation Committee to begin integration of computers into the judicial process.

Seeing the need to continually train and upgrade the skills of its employees, the Superior Court implemented a number of training workshops and incentive programs inclusive of the Employee AWARDS program, the Legal Assistant workshop with the University of Guam, and a Career Enhancement program that allows employees to be reimbursed for college courses that enhance their job skills.

As part of the court's outreach program, it established an internship program with the University of Guam in 1989 and continues to sponsor the Guam High School Mock Trial competition that began in 1981. Guam's team competed in the National Championships for the first time in 1990 (They placed 13 out of 51 teams.)

## **COURT ISSUES OF THE FUTURE: DISTRICT COURT APPEALS RULING OVERLOOKED**

No greater issue faces the judiciary than the issue of handling appeals, locally and the establishment of Guam's Supreme Court. Prior to the case of *People v. Yang*, the 9th Circuit Court of Guam, Appellate Division's gave deference to the District Court of Guam Appellate Division's interpretation of local Guam law. *Yang*, however changed that. The 9th Circuit now reviews interpretation of local *de novo* acknowledging no special knowledge of Guam conditions in either the Superior Court or in the Appellate Division of the District Court.

## **GUAM SUPREME COURT**

Guam's desire to establish a local Supreme Court as a first step in hearing appeals suffered a major set back due to the very narrow interpretation of Guam's judicial authority under the Organic Act in the U.S. Supreme Court case of *People v. Olsen*. In *Olsen*, the Supreme Court determined that Guam had no power under the Organic Act to create its own Supreme Court. The court relied upon the fact that Congress had plenary statutory intention to permit the creation of such a court, Guam was not permitted to enact the Guam Supreme Court.

The U.S. Congress amended the Organic Act to allow Guam to form a Supreme Court with the provision that for the first 15 years of the Guam Supreme Court, the 9th Circuit Court would still maintain judicial overview in the appeals process. In all other aspects, the appeals process would be the same as each state. Guam's Committee on Self-Determination took exception to the 15 year period and is hoping to reduce or delete this provision.

## **COMMONWEALTH A JUDICIAL GOAL**

As part of his collateral duties, Presiding Judge Lamorean serves on the Commission on Self-Determination which seeks to rectify certain shortfalls in the Organic Act of Guam. Since the passage of the Organic Act in 1950, Guam had a local trial court with appeals going to the Appellate Division of the District Court and from there, the Ninth Circuit. Seeking a fundamental restructuring of Guam's relationship with the United States through a commonwealth act, the local Guam court is seeking a change in its relationship with the federal court system.

## **ESTABLISHMENT OF THE GUAM JUDICIAL COMMISSION**

In his 1991 State of Judiciary Address, Presiding Judge Lamorean announced his intention to form a Judicial Commission that would review existing goals, issues, programs pertaining to the courts, the Attorney General's Office, the Public Defender, Traffic Court, the Public Defender, Traffic Court, Family Court, and other entities within the Department of Law and the Judicial Branch. It would include reassessments of alternative sentencing, alternative dispute resolutions, methods of incarceration, prosecution and defense practices, criminal and civil proceedings, attorney filing methods, continuing education, the Supreme Court and many others. The Judicial Commission would serve as a vehicle to establish specific goals and methods of obtaining those goals in order to standardize the judicial process and make it more efficient and effective in administering justice.



## **THE GUAM JUDICIAL CENTER**

The groundbreaking for the new Guam Judicial Center took place on September 9, 1988. On hand for the ceremony were Presiding Judge Alberto C. Lamorena, III, Governor Joseph



Ada, Speaker Joe T. San Agustin, Senator Pilar Lujan, Chairwoman of the Committee on Judiciary, Attorney General Elizabeth Barrett-Anderson, then President of the Guam Bar, Pat Cville, and other island dignitaries.

The 11 million dollar complex included construction of a four level judicial center, the renovation of the old courthouse and the Superior Court annex. The Guam Judicial Center is designed to house the Superior Court of Guam, the Attorney General's Office, the Public Defender and eventually, the Supreme Court of Guam. Phase two of the project, the renovation of the Agana courthouse, is expected to be completed in 1992.

On July 15, 1991, the court began partial operation in the new Guam Judicial Center and was completely operational on July 23, 1991. A brief ribbon cutting ceremony marked the event.

The Superior Court of Guam celebrated its official opening of the Guam Judicial Center on September 26, 1991. Hosted by Presiding Judge Alberto C. Lamorean III, the judges of the Superior Court of Guam, the Guam Judicial Council members and employees of the Superior Court of Guam, the event included tours of the facility, the placement of a time capsule, the planting of the Ifit tree (Guam's territorial tree) and Puti Tai Nobio (territorial flower), and the unveiling of the Spanish Residencia display (a 1777 document discovered and restored by the courts with the assistance of the Bishop Museum in Hawaii).

The first trial held in the Judicial Center was a Civil proceeding presided over by Judge Benjamin J. Cruz. The first court filing took place on July 15, 1991 at 9:10a.m. and was a \$74 traffic fine processed by court clerk Galo L. Perez, Jr.

## **THE PACIFIC JUDICIAL COUNCIL**

Among the invited guests to the Grand Opening were Chief Justices and judges from the Federated States of Micronesia, Belau, the Marshals, and the Commonwealth of the Northern Marianas. One of the items on the agenda was to formulate plans for a Pacific Judicial Council that would serve as a forum for island Judiciaries to exchange ideas, establish programs and methods to resolve common problems confronting their communities. On September 27th in a meeting held at the Pacific Star Hotel, six Chief Justices of Belau, the Marshals, the Commonwealth of the Northern Marianas, Chuuk, Yap, Pohnpei and the Presiding Judge of Guam signed the Articles of Association for the Pacific Judicial Council. Guam's Presiding Judge Lamorena was selected as the Acting President of the Council.

## **THE COURT'S FUTURE ON GUAM**

In 1991, America celebrated the 200th Anniversary of the Bill of Rights, honoring perhaps the most important legal document written in mankind's history to date - the U.S. Constitution. In the decade of the 90's Guam will continue to seek it's own self-determination for it's own government. As for the future of Guam's courts, Presiding Judge Alberto C. Lamorena III summarized it in his 1991 State of Judiciary:

*"We are on a great quest to form the finest Judicial system in the nation, to serve the finest community in the nation. I have full confidence in this generation of jurists to seek the legal horizons that lie before us. And I believe in the ability of the court staff and management to continue to effectively administer justice in service of our community.*

*In this, the last decade of the 20th century, Guam will set the foundation for the Judicial system of the twenty-first century. As we celebrate the 200th Anniversary of the Bill of Rights, we must understand that freedom is not found within a document, but in the spirit of a people that embraces the responsibilities that befall them. This is the greatest challenge facing the courts today -- and one I intend to meet head on. Thank you and si Yuus maase..."*