

**1999 STATE OF THE JUDICIARY ADDRESS
A REPORT TO THE PEOPLE OF GUAM**

by
The Honorable Benjamin J.F. Cruz
Chief Justice
University of Guam
College of Arts & Sciences Lecture Hall
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Chairman Shimizu, Regents, President Nededog, faculty and students of the University of Guam, please accept my sincerest Si Yuus Maase for providing us with this forum and the opportunity to Report to the People of Guam on the State of Guam's Judiciary.

In his last State of the Judiciary Address, my predecessor Justice Peter C. Siguenza, Jr. stated, "In addressing the State of Guam's Judiciary, I will focus on one critical point-- that this branch is broken."

Chief Justice Siguenza went on to say "We need to fix things and we need to do it together. No one branch has the power to heal, or even sustain itself, without the support of the others. We are all interdependent".....

Almost eighteen (18) months have passed and things have gone from bad to worse. The Lehislaturan Guahan has chosen to ignore Chief Justice Siguenza's pleas to make the Judiciary whole. They have even decided they no longer want to hear our annual address.

The Judicial Empowerment Act introduced by Congressman Underwood in 1998 failed to pass the last Congress and it has not been reintroduced in this Congress.

I am starting to think that a passing comment made by a student the last time I addressed a CBPA forum here at UOG last April is the answer----The People may need to resort to the initiative and referendum procedure to protect the doctrine of three co-equal branches of government.

The Supreme Court of Guam has zealously protected the doctrine of separation of powers. It reversed my trial court decision requiring that an individual be placed in a program available for parolees, although the individual was not a parolee, by concluding that the order encroached upon the power of the Territorial Parole Board, an Executive branch agency, to grant or deny Parole. The Supreme Court further held that the trial court's order usurped the power of the Guam Legislature when it vested authority of parole determinations in the executive branch.

My Brethren on the Supreme Court reversed another one of my Superior Court decisions by holding that the doctrine of separation of powers would be usurped by a Superior Court Judge ordering an Executive Branch Department of Corrections to implement the Youth Corrections Act which the Guam Legislature had chosen not to fund.

This last June the Supreme Court of Guam proved its truly judicious nature and adherence to the doctrine of separation of powers when it reversed and remanded the *Hamlet v. Charfauros* case wherein we held that the Speech and Debate Clause assures the Legislature, as a body, "wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch or interference or intrusion by the Judiciary."

With that personally and politically difficult decision, the Justices of the Supreme Court fulfilled a challenge Chief Justice Siguenza made in his last State of the Judiciary Address, where he challenged the Legislature with the words:

[i]ts important that we leave our children, and their children, a government that is complete and strong. We have been given the unique opportunity to make a difference through the positions we hold. And we can do it. We can see to it that Guam is given a government comprised of three co-equal branches.

From the beginning, the Supreme Court has been plagued with an inability to maintain three full-time Justices for an extended period. Less than a year after assuming her seat on the Court, Justice Monessa Lujan passed away at a very early age. Her seat remained vacant for almost eight months before a replacement was sworn in.

During this last year, the Supreme Court suffered another setback. A Guam Bar Ethics Committee Opinion relative to active practitioners sitting on the High Court, caused the resignation of all four (4) of our Part-time Justices. We would like to now publicly acknowledge and express our appreciation to Justice Joaquin C. Arriola, Justice Eduardo A. Calvo, Justice Jose I. Leon Guerrero and Justice Howard Trapp for the countless hours they devoted to the Supreme Court of Guam and for accepting compensation at

a fraction of their regular billable rate.

Additionally, the recent resignation of Justice Janet Healy Weeks has left a void on our bench that will be nearly impossible to fill. Justice Weeks served the Judiciary of Guam with dedication and distinction for twenty-four (24) years. Her legal acumen and wisdom will be missed. The Judiciary and the People of Guam extend our heartfelt gratitude and thanks for the many years she served her island home. We wish her God speed and good health in her well-earned retirement.

The Supreme Court of the Federated States of Micronesia and the Courts of the Commonwealth of the Northern Mariana Islands are also owed a debt of gratitude for graciously allowing Designated Justice Richard H. Benson and Designated Justice John A. Manglona to devote their time towards assisting the Supreme Court of Guam in this past year. During the August Session, these Justices sat on as many cases as Justice Siguenza and myself.

The senior members of the Guam Bar who served as Pro Tempore Justices also deserve our thanks. Their short tenure on the bench gave them an appreciation for the work of the court, and an understanding of what it is like to be the lowest paid attorney in the courtroom when they appeared as Justices rather than as practitioners.

Through all of these challenges and despite the fact that we at the Supreme Court have been stripped of our supervisory powers over the Superior Court, the Judiciary as a whole has endeavored to work together for the benefit of the People of Guam. Three Superior Court Judges accepted Designated Justice appointments and served on seven (7) Supreme Court panels that heard appeals last August. I anticipate the continued use of the Superior Court Judges as Designated Justices until such time as the Lehislaturan Guahan confirms a third full-time Justice.

We do, however, hope that the Lehislaturan Guahan will act soon on the Justice-nominee currently being considered for confirmation. We also hope that together with the Guam Bar Ethics Committee we can agree on a system of appointing additional Justices, be they Designated or Part-time, to address the recusal and conflict cases common in our small island community.

Despite the foregoing, the Supreme Court, committed to the goal of serving the people, anticipates issuing as many opinions this year as the cumulative total of the last three years. Together with the Superior Court, as a united Judiciary, we are determined to persevere and flourish by working towards healing this broken branch and renew the challenge to the other branches to join us in this truly arduous endeavor-- establishing the Judiciary as the third, co-equal branch of government.

Aside from the institutional problems plaguing the Judiciary, we now face societal challenges impacting the nature and number of cases flooding our courts today.

Fifteen years ago, in my inaugural speech as a Judge of the Superior Court, I expressed my hope that by the time I retired from the bench that the caseload of the court would not require my continued service.

I am eligible for retirement in forty (40) days and I regret to inform you that, the caseload of the court has exploded exponentially rather than being dramatically decreased.

In 1995, five hundred eighty (580) Felony Cases were filed. In 1998, that number rose to nine hundred and forty eight (948).

Misdemeanors have gone from one thousand one hundred and eighty three (1,183) in 1995 to two thousand fourteen (2,014) in 1998.

In 1995, filings in civil cases totaled one thousand nine hundred and nineteen (1,919). That number increased by 50% to two thousand nine hundred and ninety four (2,994) in 1998.

When the Guam Legislature created the Family Division of the Court eighteen (18) years ago, it intended for one Judge to handle all Family matters so that he or she would be intimately familiar with every aspect of a family's problems. Initially one Judge was able to do this and still assist in hearing other civil and criminal cases. When I assumed responsibility for the Family Division 14 years ago that was still true. By the time I relinquished the Family Division ten (10) years later, it was a full-time endeavor.

Today two (2) judges and one (1) referee devote their entire day to dealing with juvenile delinquency, juvenile dependency, family violence, domestic and child support cases.

In 1998, five hundred five (505) juvenile delinquency cases were filed, almost double the two hundred seventy (270) filed in 1997.

One thousand two hundred thirty one (1,231) Juvenile dependency petitions were filed in 1998, up 20% from the one thousand (1,000) filed in 1995, the last year I served in Family Court. To date, almost nine hundred (900) juvenile dependency cases have

been filed and the Court expects to exceed 1998 filings.

The Family Division of the Attorney General's Office has informed me that they have four (4) attorneys handling Juvenile Delinquency and Juvenile Dependency cases. They have five (5) attorneys assigned to the Child Support section to handle the eleven thousand three hundred and sixty (11,360) open and active child support cases. They anticipate opening one hundred (100) new child support cases each month. To address this additional caseload, the Superior Court has employed a full time referee and a support staff larger than the Family Court Division had fifteen (15) years ago.

Of all the Felony charges filed in the Superior Court, Family Violence ranked number one (#1) in 1995 with one hundred and fifty three (153) cases. In 1996 it dropped to one hundred and fifteen (115) cases but it was still the number one (#1) felony charge. In 1997 it dropped to number three (#3) with one hundred twelve (112) cases filed.

In 1998, the number of Family Violence felony cases doubled to two hundred and thirty two (232) charges and ranked number two (#2) and as of September 1999, one hundred and forty nine (149) charges have already been filed.

Family Violence as a misdemeanor charge has gone from two hundred and sixty one (261) charges in 1995 to eight hundred and fifty (850) charges in 1998.

The number of homicides related to domestic violence has averaged three (3) per year during this decade. To date there are already three (3) alleged family violence homicides and we still have three (3) months to go until the new millennium.

To sum it up, the State of the Judiciary is busy with an ever burgeoning caseload. The Superior Court will continue to be taxed and inundated with cases until we as a community implement some preventative and proactive measures to stem the tide of this tsunami that threatens to drown our island.

For over twelve years I have implored Governors, Legislators, Boards and Directors of Education to implement a "Parenting curriculum" in the school system. We provide an educational curriculum to prepare our children for every conceivable vocation and avocation, but we do nothing to prepare them for the responsibility that we know over 80% of them are going to have to confront as Parents with Families.

The response I usually get is "that should be taught at home."

We teach Chamorro to children whose parents do not know how to speak Chamorro, or who are even Chamorro.

We teach English grammar to children whose parents do not even realize there are grammatical rules.

We teach math and science to children of parents, many of whom have studied neither.

We teach computer science to students of parents who have never touched a computer.

But....But we refuse to teach Parenting skills to children who unfortunately come from homes where neither father nor mother have positive parenting skills.

As a Family Court Judge for almost ten (10) years, I cannot count the number of times that children came before me unaware that the physical and/or sexual abuse they were suffering at home was not the norm.

I cannot count the number of domestic cases where the batterer and the victim did not realize that anything was wrong because they came from similar home environments.

We cannot and should not continue to address this problem prescriptively-- after a child or a parent has been killed or suffered the trauma of family violence.

Together, we as a community must petition if not demand that our elected leaders endeavor to prevent this problem by implementing a parenting curriculum in the school system so that hopefully our children's children will not have to endure similar suffering.

After advocating this prevention program for over a decade, I have come to the realization that I do not have the power or the influence to cause our elected leaders to see the light.

So rather than curse the darkness, I have decided to light my own little candle. As Chief Justice, I now have the administrative

authority over a small segment of the judiciary and the government.

I have decided that the Supreme Court will lead by example. My staff and I are now studying a guide for dealing with violence in the workplace, issued by the United States Office of Personnel Management. We are also studying an actual policy for Zero Tolerance for Domestic Violence, implemented by the Polaroid Corporation and the Liz Claiborne Organization.

The Domestic Violence Policy I plan to implement before the start of the new millennium will provide victims and batterers the opportunity, if not the requirement, to attend and successfully complete counseling programs to address their plight or problem.

At a minimum, this policy will provide leave for victims to attend court hearings, counseling sessions for themselves and their children, doctors visits, and time to relocate if necessary.

This policy will also include requirements that batterers successfully complete an anger management program or face disciplinary action.

The government has adopted a Drug-Free Workplace Policy which addresses rehabilitation for substance abusers as a condition for retaining their position. Why can't a similar policy be promulgated to combat Domestic Violence? More importantly, why can't more programs be developed to help our citizens with substance abuse and domestic violence problems?

Eight years ago, the Legislature provided funding to expand the Department of Social Work here at the University of Guam. My goal in advocating for the expansion was to develop a graduate degree program in Social Work that would train mental health professionals who could work to implement preventative programs.

I also intend on implementing a proactive prevention program with Judiciary employees. I will start with a pilot program in the Supreme Court where I will encourage our employees to become involved in some crime prevention program in the community. We will allow our employees up to five (5) hours of administrative leave per week to be involved in the community.

If they have an athletic skill they will be encouraged to volunteer to coach at the elementary and middle schools where no coaching appropriations have been provided.

If they are competent enough to tutor then they will be allowed extended lunch hours to tutor at-risk children.

If they have musical or artistic skills they will be allowed time to impart those skills to students in the school system or at DYA, Sanctuary or other shelters.

If the employee does not wish to share a skill or tutor they will be encouraged to volunteer time at the schools or the shelters so that the teachers and professional staff can provide more individual attention to especially at-risk children.

I accepted the University's invitation to deliver this State of the Judiciary Address because I realized that it would provide me with the perfect platform from which to challenge all of you to become proactive in the prevention of crime in our island community.

Imagine the benefits we would reap if each University student volunteered a few hours a week tutoring or mentoring students in the schools or shelters in Mangilao or in their own villages. As successful university students, all of you have a skill that you can and should share by tutoring younger minds. You would be the ideal role model to mentor young students.

If you have the spirit to volunteer some time to mentoring an at-risk youth, imagine the number of school drop outs we could avert, or even more importantly imagine the number of young lives you could possibly influence to avoid the damaging effects of drugs or the ultimate destruction of suicide.

The suicide rate among adolescents and young adults has been increasing at an alarming rate. We must take proactive and preventative measures to protect our children.

We lost two young teenage lives to senseless suicides just last month. Unofficial reports have suicide claiming the life of one young person between the ages of fifteen and twenty-five each month. We must take some proactive and preventative measures to address this problem.

Two weeks ago I met with teachers and counselors who have volunteered to become certified as facilitators for *Rainbows*, an organization dedicated to helping students deal with grief and trauma due death or divorce or loss of a parent or a significant individual in a child's life. I was shocked to learn that some school administrators were opposed to allowing these volunteers to assist students in their schools.

Until such time that we train sufficient social workers we must take advantage of the volunteers who have come forward to offer assistance. Unless we educate and train sufficient individuals to assist us address the mental health of our people, our political progress and economic gains will ring hollow in the community. I challenge the Regents and this University to fill that critical need.

I want to commend Chairman of the Judiciary Committee, Senator John Salas for recognizing the value of a recommendation made at the Supreme Court's last Bench and Bar Conference to empanel a Law Revision Commission to recommend amendments to Guam's Laws, to repeal unnecessary statutes and clarify conflicting sections to obviate the need for the Supreme Court to intervene to resolve a dispute.

One of the Superior Court Judges recommended that we challenge the Legislature to review Guam's gun laws. We realize that an outright ban on all guns would not pass, but we do believe that a rational solution such as banning assault weapons, providing funds to buy back certain types of guns could be crafted to reduce the number of homicides and crimes committed with guns.

I am embarrassed to read that the Judiciary FY 2000 Appropriation is greater than the sum provided for the University of Guam. When we dedicated the new Guam Judicial Complex five (5) years ago many were shocked by my response to a reporter's inquiry about how I felt about our new building.

I told the reporter that one cannot take pride in the building of new larger facilities for the court or the department of corrections. The mere fact that larger buildings were needed only evidenced a growing cancer in the community known as crime and corruption. Our community can and should only take pride in the new buildings and growth of this University. These would be signs of our community moving in the right direction.

In addition to being a co-equal branch, we also want to be partners with the other branches of government in moving in the same direction towards combating the larger problems which face our community.

To paraphrase Justice Siguenza, we need to fix what ails our community together. No one segment of our community has the power to heal or even sustain itself without the support of the others. We are all interdependent. We have a responsibility to leave our children and their children a community that is nurturing and safe. As we approach the new millennium, we have the unique opportunity to make a difference as a result of our education and expertise. We must do this and we should do it together.

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